



Legal Document

Superior Court of California, County of San Mateo
Case No. CIV484400
Martin Eberhard v. Elon Musk et al

Document 52



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Yosef Peretz (SBN 209288)
Emily Knoles (SBN 241671)
Genevieve Guertin (SBN 262479)
PERETZ & ASSOCIATES
22 Battery Street, Suite 202
San Francisco, California 94111
Telephone: (415) 732-3777
Facsimile: (415) 732-3791

Attorneys for Plaintiff MARTIN EBERHARD

FILED
SAN MATEO COUNTY

JUL 16 2009

Clerk of the Superior Court
By *[Signature]*
DEPUTY CLERK

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO**

MARTIN EBERHARD,

Plaintiff,

vs.

ELON MUSK; TESLA MOTORS, INC.;
and DOES 1-20, inclusive,

Defendants.

Civil Case No. CIV-484400

**DECLARATION OF YOSEF PERETZ
IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANTS'
SPECIAL MOTION TO STRIKE
PORTIONS OF PLAINTIFF'S
COMPLAINT AS A STRATEGIC
LAWSUIT AGAINST PUBLIC
PARTICIPATION**

Date: July 29, 2009

Time: 9:00 a.m.

Dep.: 11

Judge: Hon. John L. Grandsaert

I, Yosef Peretz, declare:

1. I am a partner of the firm Peretz & Associates and am duly licensed to practice law in the State of California.

2. I represent Plaintiff MARTIN EBERHARD ("Plaintiff") in this action. I have personal knowledge of the matters set forth herein and if called upon to testify, I could and would do so competently.

3. This declaration is given in support of the Plaintiff's Opposition to Defendants ELON MUSK ("Musk") and TESLA MOTORS, INC. ("Tesla") (collectively, "Defendants")'s Special Motion to Strike Portions of Plaintiff's Complaint as a Strategic Lawsuit Against Public Participation.

DECLARATION OF YOSEF PERETZ IN SUPPORT OF PLAINTIFF MARTIN EBERHARD'S OPPOSITION TO DEFENDANT ELON MUSK AND TESLA MOTORS, INC.'S SPECIAL MOTION TO STRIKE PORTIONS OF PLAINTIFF'S COMPLAINT AS A STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION

1 4. One claim in the present lawsuit concerns a letter that Tesla sent to its employees,
2 investors and customers that stated that Tesla had terminated employees in or around the end of
3 2007 to ensure "accountability" in the company. See Plaintiff's Exhibit 60. On October 15,
4 2008, I attended the deposition of Tesla's former Chief Information Officer, Gene A. Glaudell
5 ("Glaudell"), in the action entitled *Vespremi et al. v. Tesla Motors, Inc., et al.*, San Mateo
6 County Superior Court, Case No. CIV-474656 ("Vespremi Action"). A true and correct copy
7 of excerpts of the deposition of Glaudell is attached hereto as Exhibit "69."

8 5. Glaudell stated at his deposition that he attended an executive staff meeting that was
9 also attended by Musk, Tesla's then-Chief Executive Officer, Ze'ev Drori ("Drori"), and
10 Tesla's Vice President of Finance, Mike Taylor ("Taylor"). Glaudell testified that Musk and
11 Drori discussed the reasons for terminations of employees by Tesla at that meeting, and that
12 those terminations were made primarily for financial reasons rather than for performance
13 issues. However, Musk and Drori stated that did not want to state in public that they were
14 "making cuts" for financial reasons and that they planned to state that the layoffs were for
15 "performance and management accountability" reasons despite the fact that Glaudell and
16 Taylor protested that to make such claims was "not right" (Exhibit 69, p. 81:3-24).

17 6. Glaudell also testified that he and Taylor told Musk and Drori that it is
18 inappropriate to discuss performance reasons for employee dismissals in public, as well as to
19 publish such statements. Glaudell testified that he and Taylor warned Musk and Drori that
20 they should not do that (Exhibit 69, pp. 80:21-81:2).

21 7. On December 16, 2008, I took the deposition of Tesla's General Counsel, Craig
22 Harding ("Harding"), in the Vespremi Action. A true and correct copy of excerpts of the
23 Deposition of Harding is attached hereto as Exhibit "70." At his deposition, Harding testified
24 that he recalled Taylor making statements in December 2007 that Tesla should not make public
25 statements that individuals who were laid off were terminated for poor performance (Exhibit
26 70, p. 217:7-25). Harding also testified that he recalled Musk indicating that he felt it was
27 better not to characterize Tesla's dismissals of employees as layoffs because the term "layoff"
28 was characteristic, in the public's mind, of a company having financial problems (Exhibit 70,
pp. 218:14-219:8). Finally, Harding also testified that it was his understanding that the layoffs

1 that took place around the time of the meeting in December 2007 were also made for financial
2 reasons (Exhibit 70, p.220:8-24).

3 8. Attached hereto as Exhibit "71" is a true and correct copy of the Second Amended
4 Verified Complaint dated, October 5, 2007, in the action entitled *John O'Reilly v. Elon Musk*,
5 San Mateo Superior Court Case No. 107 CV 083172 (the "O'Reilly Action"). This Complaint
6 includes claims for misrepresentation, fraud and deceit and misappropriation of trade secrets
7 against Musk. The Complaint alleges that Musk fraudulently misappropriated the idea of Zip2
8 from John O'Reilly ("O'Reilly") when Musk met with O'Reilly in 1995 under the auspices of
9 seeking employment with O'Reilly (Exhibit 71, pp. 3-7, ¶¶8-24). The Complaint also alleges
10 that Musk misrepresented to O'Reilly that Musk was a student at Stanford at that time (Exhibit
11 71, p. 3, ¶8).

12 9. Attached hereto as Exhibit "72" is a true and correct copy of excerpts of the
13 deposition of Norman Godinho ("Godinho"), taken on April 2, 2009, in the O'Reilly Action,
14 where Godinho testified that in early 1996 Musk approached Godinho for a loan to start a
15 company (Exhibit 72, p. 13:12-17). Godinho testified that when Musk approached him for a
16 loan, Musk told Godinho that he had received admission into Stanford University for a Ph.D.
17 program (Exhibit 72, p. 23:10-17). Godinho also testified that in approaching Godinho for a
18 loan, Musk told him that he had a scholarship and a grant to do a Ph.D. and that Musk was
19 going to study Physics at Stanford University (Exhibit 72, pp. 23:18-24:16).

20 10. Attached hereto as Exhibit "73" is a true and correct copy of excerpts of the
21 deposition of Derek Proudian ("Proudian"), taken on March 25, 2009, in the O'Reilly Action,
22 at which Proudian testified that he believed that Musk had been at Stanford University in the
23 Physics Department and that he had dropped out of that program (Exhibit 72, pp. 76:11-78:1).

24 11. Attached hereto as Exhibit "74" is a true and correct copy of excerpts of the
25 deposition of Jim Ambras ("Ambras"), taken on April 2, 2009, in the O'Reilly Action, at which
26 Ambras testified that he met with Musk in April 1996 to discuss working for Zip2 (Exhibit 74,
27 p. 10:6-19). Ambras also testified that during his employment at Zip2, Musk told him that he
28 had come to the Bay Area to study high energy physics in a graduate program at Stanford, but
had dropped out to start Zip2 (Exhibit 74, pp. 35:21-36:13).

1 12. Attached hereto as Exhibit "75" is a true and correct copy of excerpts of the
2 deposition of Craig Mohr ("Mohr"), taken on April 2, 2009, in the O'Reilly Action, where
3 Mohr testified that he thinks that Musk represented that he was a student at Stanford University
4 (p. 62:5-7).

5 13. Musk gave deposition testimony in the O'Reilly Action ("Musk Deposition").
6 Attached hereto as Exhibit "76" is a true and correct copy of excerpts from the deposition of
7 Musk, taken on May 7, 2007, in the O'Reilly Action. At Musk Deposition, Musk testified
8 twice under oath and under penalty of perjury that he received a B.S. in Computational Physics
9 from the University of Pennsylvania (Exhibit 76, p. 136:12-14; 162:3-4).

10 14. Musk verified at Musk Deposition that Exhibit 4 to that deposition was the business
11 plan for the company Global Link ("Global Link Plan"); a business plan that he authored
12 around December 1995 or January 1996 for the purpose of raising capital for that company
13 with the intent of ensuring that the document contained true and correct information (Exhibit
14 76, p. 88:20-90:12). Attached hereto as Exhibit "77" is a true and correct copy of the Global
15 Link Plan that is attached as Exhibit 4 to the Musk Deposition. On page 14 of the Global Link
16 Plan, Musk wrote that he has a B.S. degree in Computational Physics.

17 15. Musk also verified that Exhibit 5 of the Musk Deposition was the kind of "flip-
18 through" that appears to be a Power Point presentation that would have been used as a tool to
19 raise capital for Global Link (Exhibit 76, p. 131:22-133:4). On page 15 of the "flip-through"
20 for Global Link, Musk is described as having a B.S. degree in Computational Physics.
21 Attached hereto as Exhibit "78" is a true and correct copy of the Zip2 "flip-through" that was
22 attached as Exhibit 5 to the Musk Deposition.

23 16. At Musk Deposition he verified Exhibit 7 as a true and correct copy of his
24 responses to Plaintiff's Form Interrogatories, Set One, in the O'Reilly Action, and testified that
25 he stated by signing the verification of his responses that all of the information contained
26 therein was true and accurate (Exhibit 76, pp. 140:25-141:19). In response to Form
27 Interrogatory 2.6, Musk listed his "present employer or place of self-employment" from 2002
28 to the present as "SpaceX" only. Musk did not state that Tesla has been his place of
employment at any time. A true and correct copy of Musk's Responses to Plaintiff's Form
Interrogatories, Set One, in the O'Reilly Action is attached hereto as Exhibit "79."

1 17. At Musk Deposition, he verified that Exhibit 10 to the deposition was a true and
2 correct copy of the only two diplomas that he received from the University of Pennsylvania.
3 Musk also testified that he has no additional diplomas from the University of Pennsylvania
4 (Exhibit 76, p. 164:9-17). A true and correct copy of Musk Deposition Exhibit 10, Musk's
5 University of Pennsylvania diplomas, is attached hereto as Exhibit "80."

6 18. In response to Form Interrogatory 17.1, Musk stated that he "was accepted" into the
7 "graduate program for materials science & applied physics at Stanford University in 1995,"
8 and that Stanford University would have documents to support this statement. *See* Exhibit 79.

9 19. At Musk Deposition, he testified that he never attended a single class at Stanford
10 University as a graduate student and that he never paid any tuition fees at Stanford for any
11 graduate programs (Exhibit 76, p. 230:6-11).

12 20. Attached hereto as Exhibit "81" is a true and correct copy of a Deposition Subpoena
13 for Production of Business Records in the O'Reilly Action served upon the Custodian of
14 Records, the Board of Trustees of the Leland Stanford Junior University that requested the
15 following information: 1) the date(s) Musk applied to Stanford; 2) the date(s) Musk enrolled at
16 Stanford; 3) the date(s) Musk attended Stanford; 4) the date(s) Musk deferred his enrollment at
17 Stanford; 5) the department(s) in which Musk enrolled at Stanford; and 6) the degree(s) Musk
18 was awarded by Stanford.

19 21. Attached hereto as Exhibit "82" is a true and correct copy of a letter dated
20 December 16, 2008, sent from Judith Haccou, Director of Graduate Admissions of the
21 Registrar's Office, Stanford University, written in response to the subpoena attached as Exhibit
22 81. The letter states that Stanford's Graduate Admissions Office was *unable to locate any*
23 *record in its office for Musk.*

24 22. Attached hereto as Exhibit "83" is a true and correct copy of Musk's verified
25 Responses to Plaintiff's Requests for Production of Documents, Set One, in the O'Reilly
26 Action. In response to Request for Production No. 31, Musk stated that he had no documents
27 in his possession, custody or control responsive to the request for all documents from January
28 1995 to December 1996 regarding his admission to Stanford University.

 23. In response to Plaintiff's Request for Production No. 32 in the O'Reilly Action,
Musk stated that he had no documents in his possession, custody or control responsive to the

1 request for all documents from January 1995 to December 1996 regarding his enrollment at
2 Stanford University. *See* Exhibit 83.

3
4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct. Executed this 15th day of July 2009 at San Francisco, California.

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Yosef Peretz

DECLARATION OF YOSEF PERETZ IN SUPPORT OF PLAINTIFF MARTIN EBERHARD'S OPPOSITION TO DEFENDANT
ELON MUSK AND TESLA MOTORS, INC.'S SPECIAL MOTION TO STRIKE PORTIONS OF PLAINTIFF'S COMPLAINT
AS A STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION



IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

DAVID VESPREMI, GENE GLAUDELL)
and JENNIFER LIVIGNI,)
individually and on behalf of)
all others similarly situated,)
 Plaintiffs,)

 vs.) No. CIV-474656

TESLA MOTORS, INC., a Delaware)
corporation; ELON MUSK, an)
individual; ZE'EV DRORI, an)
individual; DARRYL SIRY, an)
individual; and DOES 1-26,)
inclusive,)
 Defendants.)

VIDEOTAPED DEPOSITION OF GENE A. GLAUDELL
WEDNESDAY, OCTOBER 15, 2008

PAGES 1 - 323

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7
8 Videotaped deposition of GENE A. GLAUDELL,
9 taken at 601 California Street, Palo Alto,
10 California, commencing at 11:35 a.m.,
11 Wednesday, October 15, 2008, before Cynthia
12 Manning, CSR No. 7645.
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1 APPEARANCES OF COUNSEL:

2
3 FOR THE PLAINTIFFS:

4
5 KLETTER & PERETZ

6 BY: YOSEF PERETZ, ESQ.

7 22 Battery Street

8 Suite 202

9 San Francisco, California 94111

10 415.732.3777

11 yp@kletterperetz.com
12

13 FOR THE DEFENDANTS:

14
15 WILSON SONSINI GOODRICH & ROSATI

16 BY: GARY M. GANSLE, ESQ.

17 650 Page Mill Road

18 Palo Alto, California 94304-1050

19 650.493.9300

20 ggansle@wsgr.com
21

22 ALSO PRESENT:

23
24 JENNIFER LIVIGNI

25 CHRIS COTTON, VIDEOGRAPHER

1 PALO ALTO, CALIFORNIA;

2 WEDNESDAY, OCTOBER 15, 2008; 11:35 A.M.

3
4 THE VIDEOGRAPHER: Good morning. We are on
5 the record at approximately 11:35 a.m. on October 11:35:23
6 15th, 2008.

7 My name is Chris Cotton. Here with our
8 court reporter, Cynthia Manning. We are here from
9 Veritext National Deposition and Litigation Services
10 at the request of counsel for defendant. 11:35:39

11 This deposition is being held at 601
12 California Avenue in the City of Palo Alto,
13 California.

14 The caption of this case is David Vespremi,
15 et al., plaintiffs, versus Tesla Motors, Inc., et 11:35:54
16 al., defendants. Case No. CIV-474656.

17 This is the videotaped deposition of
18 Mr. Gene Gaudell.

19 Please note that all audio and video
20 recording will take place unless all parties agree 11:36:14
21 to go off the record.

22 Microphones are very sensitive and they
23 pick up whispers and private conversations.

24 At this time, will counsel and all present
25 please identify themselves for the record. 11:36:25

1 MR. GANSLE: Gary Gansle for defendants. 11:36:29

2 MS. LIVIGNI: Jennifer LiVigni.

3 MR. PERETZ: Plaintiff.

4 Yosef Peretz for plaintiffs.

5 THE WITNESS: Gene Gaudell, plaintiff. 11:36:36

6 THE VIDEOGRAPHER: Thank you.

7 The witness may be sworn in and then we can
8 proceed.

9
10 GENE A. GLAUDELL, 11:36:41
11 having first been duly sworn, testified as
12 follows:

13
14 EXAMINATION

15 BY MR. GANSLE: 11:36:48

16 Q. Good morning, Mr. Gaudell.

17 A. Good morning, Mr. Gansle.

18 Q. As you know, I represent the defendants,
19 Tesla Motors, Elon Musk, Ze'Ev Drori and Darryl Siry
20 in the lawsuit that you've brought against them. 11:36:58

21 Do you understand the deposition procedure?

22 A. Yes, I believe I do.

23 Q. You were actually present yesterday during
24 Mr. Vespremi's deposition?

25 A. That's correct. 11:37:10

1 MR. PERETZ: Please.

13:53:08

2 THE WITNESS: We discussed the need for
3 reduction in spending. We discussed the need for
4 reductions in staff. We discussed the reasons for
5 reductions in staff. We discussed the methods to
6 decide how to reduce the staff. We discussed
7 everything that led to a subset of all these actions
8 here.

13:53:26

9 I mean, we're talking about deciding how we
10 manage our budgets, how we're going to cut our
11 budgets, where we're going to spend money, what we
12 have to do about our headcount and how we're going
13 to go do it. So very salient.

13:53:49

14 BY MR. GANSLE:

15 Q. But how is any of that discussion going to
16 support your claims?

13:54:01

17 MR. PERETZ: Calls for a legal conclusion.
18 You can answer.

19 THE WITNESS: Okay. How is it going to
20 support my claims? Well, how it's going to support
21 my claims is that, as an example, in meetings, both
22 Mike Taylor and myself told the CEO, Ze'Ev Drori and
23 Elon Musk, the chairman of the board, that it was
24 inappropriate to discuss reasons for dismissals for
25 performance of employees in public and certainly

13:54:09

13:54:37

1 publish it. We warned them that they should not be 13:54:41
2 doing that.

3 We also basically talked about why we're
4 letting people go. And the reasons we were letting
5 people go were not exclusively for performance 13:54:53
6 reasons. They were for financial reasons.

7 And we also discussed the fact that we
8 didn't want to -- that we didn't -- Ze'Ev Drori and
9 Elon Musk and Darryl Strydom did not want to say in
10 public that Tesla was making cuts for financial 13:55:08
11 reasons. So there was a discussion that basically
12 went: We don't want to say it's for financial
13 reasons. This is performance and management
14 accountability, are the reasons for layoffs. And
15 Mike Taylor and I said that's not right. That's not 13:55:24
16 true.

17 So I don't know. I think it kind of gets
18 to the heart of the lawsuit.

19 Q. So you said in your discussions that it was
20 not -- the RIFs, the layoffs, weren't exclusively 13:55:33
21 for performance reasons?

22 A. No, in fact, I would say the dominant
23 reason was not performance; it was for financial
24 reasons.

25 Q. Did you participate in the conversation 13:55:46

1 STATE OF CALIFORNIA)

2 :ss

3 COUNTY OF SAN MATEO)

4 I, CYNTHIA MANNING, CSR No. 7645, a
5 Certified Shorthand Reporter of the State of
6 California, do hereby certify:

7 That the foregoing proceedings were taken
8 before me at the time and place herein set forth;
9 that any witnesses in the foregoing proceedings,
10 prior to testifying, were placed under oath; that a
11 verbatim record of the proceedings was made by me
12 using machine shorthand which was thereafter
13 transcribed under my direction; further, that the
14 foregoing is an accurate transcription thereof.

15 I further certify that I am neither
16 financially interested in the action, nor a relative
17 or employee of any attorney of any of the parties.

18 IN WITNESS WHEREOF, I have this date
19 subscribed my name.

20
21 DATED: October 31, 2008
22
23
24

25 _____
CYNTHIA MANNING, CSR No. 7645



SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

--oOo--

DAVID VESPREMI; GENE GLAUDELL;)
and JENNIFER LIVIGNI,)
individually, and on behalf of)
all similarly situated,)

Plaintiffs,

vs.

TESLA MOTORS, INC., a Delaware)
corporation; ELON MUSK, an)
individual; ZE'EV DRORI, and)
individual; DARRYL SIRY, an)
individual; and DOES 1 - 20,)
inclusive,)

Defendants.)

No. CIV 474656

Pages 1 thru 255

Volume I

DEPOSITION OF

CRAIG W. HARDING

DECEMBER 16, 2008

Reported by ELIZABETH J. WOOD

License No. CSR-5134

COPY

JAN BROWN & ASSOCIATES

CERTIFIED SHORTHAND REPORTERS

701 Battery Street, 3rd Floor

San Francisco, California 94111

(415) 981-3498 or (800) 522-7096

--oOo--

1 TUESDAY

DECEMBER 16, 2008

2

VOLUME I

3

P R O C E E D I N G S

4

--oOo--

10:08

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THE VIDEOGRAPHER: Good morning. We're going on

10:08

6

the record. Here marks the beginning of Videotape No.

10:08

7

1, Volume I in the deposition of Craig Harding in the

10:08

8

matter of Vespremi, et. al, versus Tesla Motors, et. al,

10:08

9

in the Superior Court of California, County of San

10:09

10

Mateo, Case No. CIV 47656. Today's date is December 16,

10:09

11

2008, and the time is 10:10 a.m.

10:09

12

The video operator is Gary Brewer of Jan Brown &

10:09

13

Associates, 701 Battery Street, San Francisco,

10:09

14

California, 94111. Telephone No. (415) 981-3498. The

10:09

15

court reporter is Elizabeth Wood of Jan Brown &

10:09

16

Associates.

10:09

17

Would counsel please identify themselves and state

10:09

18

whom they represent?

10:09

19

MR. PERETZ: Good morning. Yosef Peretz for

10:09

20

plaintiffs David Vespremi, Gene Claudell and Jennifer

10:09

21

LiVigni.

10:09

22

MR. GANSLE: This is Gary Gansle for Tesla Motors

10:09

23

and -- et al.

10:09

24

THE VIDEOGRAPHER: If there are no stipulations,

10:09

25

the reporter may administer the oath.

1 CRAIG W. HARDING,
2 called as a witness on behalf of the Plaintiffs, who,
3 being first duly sworn, was then and there examined and
4 interrogated as hereinafter set forth.

5 DIRECT EXAMINATION

6 BY MR. PERETZ:

10:10 7 Q. Good morning, Mr. Harding. My name is Joseph
10:10 8 Peretz and I introduced myself earlier, but I'll do it
10:10 9 formally for the record. I am a partner at Kletter &
10:10 10 Peretz, a law firm here in San Francisco.

10:10 11 We currently represent David Vespremi, Gene
10:10 12 Glaudell and Jennifer LiVigni in a lawsuit that these
10:10 13 individuals filed with the San Mateo Superior Court
10:10 14 against Tesla Motors, Inc., which is a company that
10:10 15 you're employed with and others.

10:10 16 Are you familiar with the lawsuit?

10:10 17 A. Yes, I am.

10:10 18 Q. Is it your understanding today that you're here
10:10 19 to give your deposition in connection with this lawsuit?

10:10 20 A. Yes.

10:10 21 Q. Okay. Can you please state and spell your name
10:10 22 for the record? Just spell your last name, please.

10:10 23 A. Sure. My name is Craig Harding spelled
10:11 24 H-a-r-d-i-n-g.

10:11 25 Q. Do you have a middle initial?

05:01 1 make statement as if the layoffs is only of individuals
05:01 2 who poor performers, or something to that effect?

05:02 3 A. At a board of directors' meeting?

05:02 4 Q. Yes.

05:02 5 A. I don't recall Gene Glaudell ever attending a
05:02 6 board meeting.

05:02 7 Q. Okay. Do you remember any discussion about the
05:02 8 statements that Tesla should or shouldn't make to the
05:02 9 press in any executive staff meeting?

05:02 10 A. Yes.

05:02 11 Q. Okay. And do you remember if Mr. Glaudell made
05:02 12 such a comment?

05:02 13 A. No.

05:02 14 Q. Okay. Did Mike Taylor make a statement in an
05:02 15 executive staff meeting to the extent that Tesla should
05:02 16 not make statements as an organization that the
05:02 17 individuals that were laid off were laid off because of
05:02 18 poor performance?

05:02 19 A. Yes.

05:02 20 Q. What the -- what did -- what did Mr. Taylor say
05:03 21 exactly?

05:03 22 A. I don't recall, other than what you described.

05:03 23 Q. Okay. When did this executive staff meeting
05:03 24 take place?

05:03 25 A. December of 2007.

05:03 1 Q. So that was before any statements were made to
05:03 2 the press?

05:03 3 MR. GANSLE: Objection. Calls for speculation.

05:03 4 MR. PERETZ:

05:03 5 Q. Okay. Did anyone else responded to Mike
05:03 6 Taylor's comment?

05:03 7 A. That was -- I think one or two people expressed
05:03 8 concurrence.

05:04 9 Q. Do you remember who those people?

05:04 10 A. No, I don't.

05:04 11 Q. Do you remember if Gene Glaudell was one of
05:04 12 them?

05:04 13 A. I don't remember.

05:04 14 Q. Do you remember if any executive staff member
05:04 15 opposed this comment?

05:04 16 A. Opposed Mike Taylor's comment?

05:04 17 Q. Correct.

05:04 18 That his or her opinion was that the press should
05:04 19 know or a statement should be made that the employees
05:04 20 terminated were terminated for poor performance?

05:04 21 A. I remember one participant indicating that he
05:04 22 felt it better not to characterize this as a layoff.

05:04 23 Q. And who was that?

05:04 24 A. Elon Musk.

05:04 25 Q. Did he say why?

05:04 1

A. Yes.

05:04 2

Q. What did he say?

05:04 3

05:05 4

05:05 5

05:05 6

05:05 7

05:05 8

05:05 9

Q. That's what he said?

05:05 10

05:05 11

05:05 12

Q. Okay. Culling meaning c-u-l-l --

05:05 13

05:05 14

05:05 15

05:05 16

05:05 17

A. Correct.

05:05 18

05:06 19

05:06 20

05:06 21

05:06 22

A. Not that I recall.

05:06 23

Q. Did you make any comments?

05:06 24

05:06 25

A. That's attorney/client privilege. I'd rather not say as to what my comment was because that's the

05:06 1 nature of legal advice.

05:06 2 Q. Okay. And who participated in this executive
05:06 3 staff meeting?

05:06 4 A. The participants that I gave you.

05:06 5 Q. So I have Drori, Siry, Taylor, Chang or Chiang,
05:06 6 Glaudell, Harding, Tarpenning, Powell and Smith and
05:07 7 obviously Musk, correct?

05:07 8 A. Correct. My recollection is vague as to
05:07 9 whether this was -- this meeting took place in December,
05:07 10 in which case Lloyd and Colta may have been there, or in
05:07 11 January, after this came out, in which Lloyd and Colta
05:07 12 would not present.

05:07 13 (Brief discussion off the record.)

05:07 14 MR. PERETZ:

05:07 15 Q. And let the record reflect Mr. Harding pointed
05:07 16 to Exhibit 15, correct?

05:07 17 A. Correct. Thank you.

05:07 18 Q. Was it your understanding that Tesla laid off
05:07 19 people in January of '07 because of financial reasons?

05:08 20 MR. GANSLE: Objection. He's already testified at
05:08 21 length that that was one of the ancillary reasons for
05:08 22 it.

05:08 23 THE WITNESS: Yes, that was a secondary reason.

05:08 24 Secondary benefit, I should say.

05:08 25 MR. PERETZ:

1 STATE OF CALIFORNIA)
2) SS.
3 COUNTY OF CONTRA COSTA)
4

5 I, ELIZABETH J. WOOD, CSR, a Certified shorthand
6 Reporter, hereby certify that the witness in the
7 foregoing deposition was by me duly sworn to testify to
8 the within-entitled cause; that said deposition was
9 taken at the time and place therein stated; that the
10 testimony of the said witness was reported by me, a
11 Certified Shorthand Reporter, and was thereafter
12 transcribed under my direction into typewriting; and
13 that the witness was given an opportunity to read, and
14 if necessary, correct said deposition and to subscribe
15 the same.

16 I FURTHER CERTIFY that I am not of counsel or
17 attorney for either or any of the parties in the
18 foregoing deposition and caption named or in any way
19 interested in the outcome of the cause named in such
20 caption.

21 IN WITNESS WHEREOF, I have hereunto set my hand
22 this date, the 8th day of January, 2008.

23 *Elizabeth J. Wood*
24

25 ELIZABETH J. WOOD, CSR, License No. C-5134,
County of Contra Costa, State of California.



ENDORSED FILED

OCT -5 07

XIRI TORRE, CEO
SUPERIOR COURT OF CA.
CO. OF SANTA CLARA
BY _____ DEPUTY

JOHN O'REILLY
101 First Street, #294
Los Altos, CA 94022
(650) 941-6645
(650) 941-9475 (Fax)
IN PRO PER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

Case No. 107CV083172

JOHN O'REILLY,

Plaintiff,

vs.

ELON MUSK; DOES CONSPIRATORS 1-10,
Inclusive; and DOES GENERAL 11-25,
Inclusive,

Defendants.

SECOND AMENDED COMPLAINT

1. Misrepresentation, Fraud, and Deceit
2. Fraudulent Concealment
3. Conspiracy to Defraud
4. Misappropriation of Trade Secrets
5. State Unfair Competition and Misappropriation
6. Restitution, Disgorgement, and Unjust Enrichment

DEMAND FOR JURY TRIAL

Plaintiff JOHN O'REILLY (hereinafter "Plaintiff") complains of Defendants named herein and alleges the following.¹

¹ Plaintiff filed his First Amended Complaint ("FAC") on July 16, 2007, and Defendant Musk thereafter demurred. In a ruling filed on September 26, 2007, this Court: (a) overruled the demurrers to the First, Second, Third, Fourth, Fifth, and Seventh Causes of Action; (b) sustained the demurrer to the Sixth Cause of Action (with leave to amend); and (c) sustained the demurrer to the entire FAC (with leave to amend) on the ground "that Plaintiff fails to specifically allege circumstances excusing his delayed discovery of the injury allegedly caused by Defendant."

Plaintiff now files this Second Amended Complaint ("SAC"), wherein he: (a) revises Section V to cure the single defect this Court cited in Plaintiff's delayed discovery pleading; (b) withdraws the FAC's Sixth Cause of Action (with the FAC's Seventh Cause of Action becoming the SAC's Sixth Cause of Action); (c) updates Section VI; and (d) renumbers the paragraphs. No other portion of the pleading has changed in the transition from the FAC to the SAC.

Exhibit 71

1 **I. GENERAL ALLEGATIONS AND NATURE OF THE CASE**

2 1. That the true names and identities, whether individual, associate, or corporate, of the
3 Defendants sued herein as DOES CONSPIRATORS 1-10, inclusive, and DOES GENERAL 11-25,
4 inclusive, and the full nature and extent of the participation of said DOE Defendants in the wrongful
5 activities and conduct on which this action is based, are presently unknown to Plaintiff, who prays leave
6 to amend to allege the true names and identities, and the extent of participation in the said wrongful
7 activities and conduct, when the same shall become known. Each of the DOE CONSPIRATOR
8 Defendants entered into the conspiracy hereinafter alleged and all DOE Defendants are liable in some
9 manner to Plaintiff for some or all of the damages and/or other relief claimed herein by Plaintiff.

10 2. Plaintiff is informed and believes, and thereon alleges (and such allegations will here-
11 inafter be stated to be "on information and belief") that Defendants, and each of them, at all times
12 mentioned herein, were the agents, servants, employees, partners, and joint-venturers of each of the
13 other Defendants, and at all times herein mentioned were acting within the course and scope of, and
14 in the transaction of the business of, the said agency, employment, partnership, and joint venture.

15 3. Plaintiff is; and at all times mentioned herein was, a resident of Santa Clara County,
16 California. Plaintiff has a Ph.D. degree in Physics from Stanford University, where his thesis advisor
17 was Prof. Robert Hofstadter, winner of the 1961 Nobel Prize in Physics. Plaintiff has authored two
18 computer books and more than 50 technical papers.

19 4. Defendant Elon Musk ("MUSK") is a resident of Los Angeles County, California. At
20 the times the wrongful acts alleged herein occurred, MUSK was a resident of Santa Clara County, Cali-
21 fornia. MUSK is a founder of Zip2 Corporation ("Zip2") and PayPal (successor-in-interest to X.com).

22 **II. MUSK'S REPRESENTATIONS TO PLAINTIFF**

23 5. On or about October 3, 1995, Plaintiff received a telephone call from Felipe Lloreda
24 ("Lloreda"), a Stanford student who had previously worked for Plaintiff. Lloreda stated that another
25 Stanford student, whom he identified as MUSK, was interested in learning about Plaintiff's products
26 and might be interested in working for Plaintiff to sell those products. Lloreda specifically mentioned
27 that MUSK was interested in Plaintiff's Internet Merchant Channel ("IMC"), which was Plaintiff's
28 proprietary, Internet-based mapping and advertising system.

1 6. IMC was the culmination of more than 50 man-years of effort that Plaintiff and his
2 staff had spent developing a variety of mapping and advertising products, including: (a) mapping and
3 advertising kiosks for Shell Oil and Alamo Rent-A-Car; (b) traveler assistance and advertising
4 systems for Hyatt Corporation; and (c) real-time flight planning systems for U.S. Navy cruise missiles
5 and U.S. Air Force cargo aircraft.

6 7. Scheduled for release in December 1995, IMC provided a highly user-friendly inter-
7 face that permitted Internet users to view merchant advertisements (such as restaurant menus) and then
8 obtain driving directions to those merchants. As of October 1995, IMC contained detailed information
9 on more than 12,000 merchants in dozens of U.S. cities, with merchants within each city organized into
10 more than 100 categories, such as restaurants, hotels, car rental firms, airlines, stores, theme parks, and
11 sporting venues. Because of its features and the breadth of its database, IMC was well positioned to
12 become the "Yellow Pages of the Internet." In fact, IMC pre-dated the mapping and advertising
13 capabilities offered by most current market leaders, including Google, Yahoo!, CitySearch, and
14 MapQuest. Hereinafter, IMC's documentation, route-mapping technologies, software, marketing plans,
15 user interface, merchant database, and other features and characteristics are collectively referred to as the
16 intellectual property ("IP").

17 8. On or about October 6, 1995, Plaintiff and MUSK met at Plaintiff's office in Los Altos,
18 California. During that meeting, MUSK made certain representations that were specific in nature and
19 directed toward establishing a working relationship with Plaintiff. The representations included: (a)
20 that MUSK was a Stanford student who sought a job selling IMC advertising to merchants; and (b)
21 that MUSK had the ability and willingness to sell IMC advertising. As well, when Plaintiff informed
22 MUSK that IMC was proprietary and confidential, MUSK verbally represented to Plaintiff that he
23 would keep IMC information in confidence. MUSK's representations are hereinafter collectively
24 referred to as the "October Representations."

25 9. Also during that first meeting – acting in good-faith reliance upon the veracity of the
26 October Representations – Plaintiff informally interviewed MUSK, during which interview Plaintiff:

- 27 • Demonstrated IMC;
- 28 • Described IMC's existing and future merchant base;

- 1 • Discussed IMC's price schedule, merchant subscription agreement, and
2 merchant contract; and
- 3 • Discussed other topics that would permit MUSK to decide if he wished to
4 sell IMC advertising.

5 10. Also during that first meeting – acting in good-faith reliance upon the veracity of the
6 October Representations – Plaintiff showed MUSK the following documents, among others, that
7 contained information MUSK would need in order to decide if he wished to sell IMC advertising.

- 8 • IMC price schedule, subscription agreement, and contract;
- 9 • IMC promotional material;
- 10 • IMC market analysis;
- 11 • Direction printouts; and
- 12 • Merchant usage data and plans for future product enhancements (which
13 were contained in a document whose cover displayed the words “trade secret”).

14 11. During the remainder of October 1995, Plaintiff and MUSK met on at least two
15 additional occasions, during which meetings Plaintiff and MUSK continued to discuss IMC. During
16 their last meeting, MUSK and Plaintiff agreed to formalize their working relationship upon Plaintiff's
17 return from an upcoming overseas business trip.

18 12. Plaintiff departed on his trip on October 27, 1995, and he returned on November 11,
19 1995. Upon his return, Plaintiff made frequent, repeated attempts to contact MUSK, but Plaintiff was
20 never able to reach him. Plaintiff eventually gave up attempting to contact MUSK, concluding that
21 MUSK either had accepted another job or had decided to focus on his studies at Stanford. At that
22 time, Plaintiff had no reason to suspect that MUSK was anything but a Stanford student who had
23 decided not to pursue an opportunity to sell IMC advertising.

24 III. ZIP2

25 13. Records on file with the California Secretary of State show that an attorney operating
26 on MUSK's behalf incorporated a firm named “Global Link Information Network, Inc.” on November
27 6, 1995, which was while Plaintiff was on his aforementioned trip. The incorporation document was
28 signed by MUSK's attorney and dated November 3, 1995, which was less than two weeks after
29 MUSK and Plaintiff last met. Additional records lodged with the California Secretary of State show
30 that MUSK later changed the name of the company to “Zip2.”

1 14. Zip2's business model is described in The PayPal Wars, a book written in 2004 by
2 Eric M. Jackson.

3 Elon Musk founded X.com in early 1999 after selling his previous
4 company, an online map service named Zip2[.]

5 15. It is clear that Zip2's business of providing "online map services" (*i.e.*, Internet-based
6 map services) was highly similar, if not identical, to IMC's business model. As such, Zip2's product
7 was a competitor to Plaintiff's IMC.

8 16. Although the California Secretary of State shows that Zip2 was incorporated in Novem-
9 ber 1995, Zip2's published documents show that the firm was actually founded much earlier. For
10 example, a press release issued by Zip2 in 1997 states the firm was "[f]ounded in January 1995," which
11 was 10 months before MUSK incorporated Zip2 in California.²

12 17. The ambiguity of Zip2's start date is resolved in a magazine article in which MUSK's
13 brother, Kimbal, explains that he and MUSK had pursued the Zip2 concept since early 1995 – when
14 they both lived in Canada. (See *Kimbal Musk – Entrepreneur, Restaurateur, Rocketman, Renaissance*
15 *Man*, Inquiry, Summer 2006, p. 30.)

16 He [Kimbal Musk] and his brother Elon [Defendant MUSK] had tried
17 and failed to raise venture capital in Canada for an internet yellow
18 pages directory that would enable users to locate businesses in
19 different cities, and also provide maps and directions.

20 When Queen's School of Business Professor John Gordon suggested
21 venture capital might be easier to come by in Silicon Valley, Kimbal,
22 then 22, and Elon, 23, moved to Palo Alto, CA. They were soon
23 joined by Kimbal's former roommate, best friend and future business
24 partner, Chris Smith

25 "We didn't have an apartment, so we used to sleep under our desks
26 in the office," Kimbal recalls with a laugh. Armed with only their
27 references from summer job employers and professors, they endured
28 many rejections in their quest for US investors

 Finally, after six months, they scored the financing they needed, and
in late 1995, Zip2 was born.

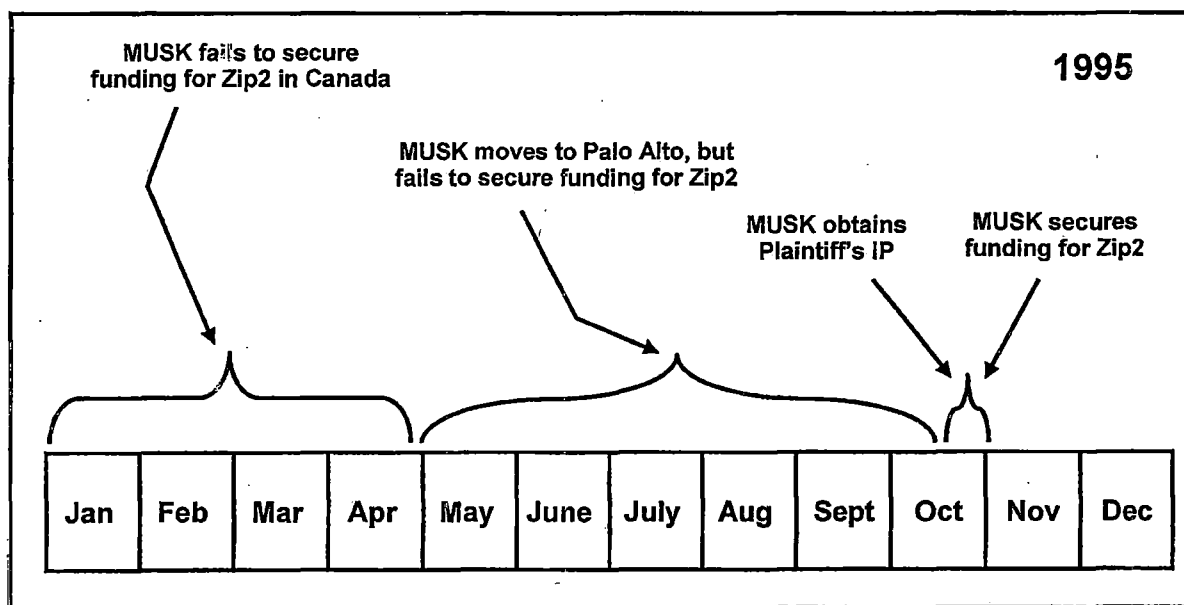
28 ² The press release in question is dated January 28, 1997, and is available online at
< http://findarticles.com/p/articles/mi_m0EIN/is_1997_Jan_28/ai_19066392>.

18. It is now evident that when MUSK met Plaintiff in October 1995, MUSK misrepresented himself as simply a Stanford student seeking an opportunity to sell IMC advertising. In reality, MUSK had started Zip2 in January 1995 and had spent months in a failed effort to obtain funding for the firm in Canada. Following that failure, MUSK moved to California to seek funding, but he instead suffered six more months of rejection. That MUSK spent so much time in an unsuccessful attempt to raise funds is strong evidence that his Zip2 idea was so flawed that it was simply unfundable.

19. Unable to afford an apartment and forced to sleep under his office desk, MUSK was clearly desperate to get Zip2 funded. Upon learning of IMC from Lloreda, MUSK misrepresented himself to gain access to the product. On information and belief, MUSK then utilized his newly gained knowledge of IMC to enhance his Zip2 concept, immediately thereafter raising the funds that had eluded him for so long.

20. Further evidence that MUSK misrepresented himself when he met Plaintiff is supplied by Zip2's aforementioned incorporation document, which lists the firm's address as "430 Sherman Avenue, Suite 300, Palo Alto, California." This address is that of a small office building that has no residential units. That MUSK had this office for Zip2 during his discussions with Plaintiff strongly indicates that MUSK misrepresented himself as simply a Stanford student when he met Plaintiff.

21. The following illustration shows how Zip2's funding followed rapidly on the heels of MUSK's access to Plaintiff's IP.



IV. MUSK'S ENRICHMENT

22. On his current website, MUSK is not meek about advertising the financial benefit he enjoyed when he eventually sold Zip2.

Mr. Musk co-founded Zip2 Corporation in 1995[.] ... He served as Chairman, CEO and Chief Technology Officer and in March 1999 sold Zip2 to Compaq for \$307 million in an all cash transaction.

www.spacex.com/company.php#spacex_people (underlining added).

23. On that same website, MUSK explains that he subsequently co-founded PayPal and then sold that firm. Shortly after that sale, MUSK gave a speech in which he revealed his guiding principles in founding Zip2 and PayPal.³

Common themes between Zip2 and PayPal. ... We didn't worry too much about intellectual property, paperwork, legal stuff.

24. MUSK's simple statement speaks volumes about his disdain for the intellectual property rights of others. As well, the statement speaks in strong support of Plaintiff's assertion that MUSK's true goal in meeting Plaintiff was to gain access to Plaintiff's IP, with MUSK unabashedly employing fraud, misrepresentation, deceit, guile, and trickery to do so.

V. PLAINTIFF'S DISCOVERY OF MUSK'S WRONGFUL ACTS

A. The Time and Manner of Plaintiff's Discovery

25. On or about March 22, 2005, Plaintiff attended a talk given by Denise Pope, author of a book on high school education. On March 27, 2005, Plaintiff visited Amazon.com's website to purchase Ms. Pope's book. To take advantage of Amazon.com's offer of free shipping on orders above \$25, Plaintiff identified another book of possible interest – the aforementioned The PayPal Wars by Eric M. Jackson. Plaintiff then purchased both books.

26. On or about April 15, 2005, while reading The PayPal Wars, Plaintiff encountered the aforementioned passage that stated MUSK had formed Zip2 and that also described Zip2 as "an online map service" company. Before reading that passage, Plaintiff had never heard of Zip2. Indeed, it was

³ MUSK's speech was presented at Stanford University on October 8, 2003. It is available online at <edcorner.stanford.edu/authorMaterialInfo.html?mid=384&author=33>.

1 only upon his reading of that passage that Plaintiff first suspected: (a) that he had been injured; and
2 (b) that it was MUSK who had caused the injury.

3 **B. The Circumstances Excusing Plaintiff's Delayed Discovery**

4 27. Plaintiff is a reasonable, prudent person who, prior to April 2005, had no reason to
5 suspect that his meetings with MUSK in October 1995 had been anything but cordial, good-faith discus-
6 sions regarding MUSK's desire to sell advertising for Plaintiff. Also, for the reasons presented next,
7 it is unreasonable to assert that Plaintiff (or any other reasonable, prudent person) should have suspected
8 or discovered MUSK's wrongdoing prior to April 2005.

- 9 a. **Period No. 1: October 1995.** As aforementioned, MUSK was introduced to
10 Plaintiff by Lloreda, a Stanford student who had previously worked for Plaintiff.
11 Lloreda had told Plaintiff that MUSK was a Stanford student who might be inter-
12 ested in working for Plaintiff to sell advertising. Since classmate referrals are
commonly used to arrange job interviews, Plaintiff had no reason either to doubt
the sincerity of Lloreda's introduction or to ascribe nefarious motives to MUSK.

13 During his meetings with MUSK, Plaintiff exercised reasonable judgment
14 and common sense in discussing IMC, and he provided MUSK with informa-
15 tion MUSK required to make an informed decision about selling advertising.
At no time during these discussions did Plaintiff have reason to suspect that
MUSK's actions were anything but an honest, pristine expression of his interest
in selling advertising.

- 16 b. **Period No. 2: November 1995 to February 1996.** Upon returning from his
17 overseas trip in November 1995, Plaintiff attempted to contact MUSK multiple
18 times, but he gave up after being unable to reach him. Plaintiff reasonably infer-
19 red that MUSK either had accepted another job or had decided to focus on his
20 studies. At no point did Plaintiff have reason to suspect that MUSK was any-
thing but a Stanford student who had simply declined to pursue the sales oppor-
tunity. As such, Plaintiff had no reason to expend significant effort to track down
MUSK and grill him about why he wasn't interested in selling advertising.

21 Also, given that MUSK had misrepresented his reason for meeting with Plain-
22 tiff, it is reasonable to conclude that Plaintiff's unsuccessful attempts to contact
MUSK were more indicative of MUSK's not wanting to be contacted than of
Plaintiff's lack of diligence in trying to contact him.

23 As well, after February 1996, Plaintiff was not involved with IMC, and he thus
24 did not stay abreast of related technologies, products, or competitors.

- 25 c. **Period No 3: March 1996 to February 1999.** MUSK incorporated Zip2 in
26 November 1995 and sold the firm in February 1999. During that interval,
27 however, the entire country was awash with companies developing what were
purported to be billion dollar products and websites. These companies
were raising massive amounts of venture capital and generating a smothering
blizzard of publicity.

1 That Zip2 was dwarfed within this overall market is illustrated by the fact that
2 the firm raised only \$16 million of the \$54 billion that was pumped into U.S.
3 venture deals during Zip2's 40-month, pre-acquisition life. This amount
4 represents a scant 0.03% of all venture funds invested during that period,
5 which is a level that would not have drawn unusual attention to Zip2.⁴

6 Similarly, although Zip2 was acquired for \$307 million in February 1999,
7 that same year saw 304 venture-backed companies acquired for a total of \$43
8 billion. Zip2's acquisition was unremarkable, and the event was simply lost
9 in the confusing clutter of similar deals.

10 Moreover, all of these corporate acquisitions paled in comparison to their big
11 brother – the Initial Public Offering (“IPO”). Indeed, it was the IPOs of the
12 late 1990s that generated giant headlines and brought the country's collective
13 psyche to its capitalistic boiling point. Between 1996 and 1999, some 2,200
14 IPOs raised more than \$195 billion. Solely in 1999, for example, 492 IPOs
15 raised some \$63 billion. Being quietly acquired – instead of generating IPO
16 hype – was yet another reason Zip2 was simply lost in the frenzy of the largest
17 economic boom the world has ever seen.

18 Finally, even if Plaintiff had had the opportunity to read about Zip2's 1999
19 acquisition – presumably by reading every press release issued for each of that
20 year's 304 acquisitions and 492 IPOs – Plaintiff still would not have suspected
21 MUSK of wrongdoing because **the press release that announced Zip2's**
22 **acquisition didn't even mention MUSK's name.**⁵

- 23 d. **Period No. 4: March 1999 to March 2005.** On information and belief,
24 MUSK left Zip2 immediately after its acquisition, and the company there-
25 after significantly shifted its product focus. At that time, it was thus highly
26 unlikely that Plaintiff would ever learn of MUSK's wrongdoing.

27 28. Given these circumstances, Plaintiff (or any other reasonable, prudent person) could not
28 reasonably have been expected to ever suspect or discover MUSK's wrongdoing. Indeed, it was only
29 by his chancing upon The PayPal Wars in April 2005 that Plaintiff learned of Zip2. Immediately
30 thereupon, Plaintiff first suspected MUSK of wrongdoing.

31 29. Plaintiff's circumstances justify his delayed discovery of MUSK's wrongful acts.
32 Hence, under California law, the statute of limitations accrued at the time Plaintiff first suspected he
33 had been injured, *i.e.*, on or about April 15, 2005. By filing the initial complaint against MUSK on
34 April 4, 2007, Plaintiff acted well within the statute of limitations governing the instant causes of action.

35 ⁴ The financial statistics presented in this section were obtained from:

- 36
 - 37 [▪] <www.pwcmoneytree.com/MTPublic/ns/nav.jsp?page=historical>
 - 38 [▪] <www.ipomonitor.com/reviews/1999/pages/comprehensive.shtml#>
 - 39 [▪] <www.ventureone.com/ii/4Q04-Liquidity-Release.xls>
 - 40 [▪] <findarticles.com/p/articles/mi_m0EIN/is_1997_Jan_28/ai_19066392>

41 ⁵ See <sec.edgar-online.com/1999/02/17/12/0000714154-99-000005/Section5.asp>.

VI. POST-COMPLAINT SPOILIATION

Description of the Wayback Machine

30. The Wayback Machine is an Internet-based search engine that maintains historical copies of billions of web pages. The Wayback Machine is operated by the non-profit Internet Archive (San Francisco, Cal.) in collaboration with the Library of Congress and the Smithsonian Institution. The Wayback Machine's contents are available free-of-charge at www.waybackmachine.org.

31. Since becoming operative in 1996, the Wayback Machine has archived more than 80 billion web pages, most of which are from corporate websites. As of July 15, 2007, for example, the Wayback Machine maintained 1,763 different historical versions of IBM Corp.'s website, which versions ranged in date from October 22, 1996, to June 15, 2007.

32. In recent years, the Wayback Machine has become an integral discovery tool.

At some law firms, litigators now ask researchers, "can you do a Wayback on that?" The archives are most attractive to specialists in intellectual-property law – in particular, areas such as domain-name battles – and have been used by companies as diverse as EchoStar Communications Corp. and Playboy Enterprises Inc. In February, recovered pages prompted a mistrial in a prominent murder case in Canada.

The archive tools provide lawyers with a quick and inexpensive way to unearth evidence that otherwise might not be available. Lawyers have always been able to seek copies of old Web pages in a pretrial phase known as discovery. But some parties might not save every version of their Web sites and others might routinely get rid of stored pages.

David Kesmodel, *Lawyers' Delight: Old Web Material Doesn't Disappear*, The Wall Street Journal Online, July 27, 2005, <online.wsj.com/public/article/SB112242983960797010-qndezZbakQChoXkYrzRSRibbN6A_20050828.html?mod=blogs>.

Historical Copies of Zip2's Website were Removed from the Wayback Machine

33. Plaintiff filed his initial complaint on April 4, 2007. Prior to that filing, Plaintiff noted that the Wayback Machine maintained copies of Zip2's website that had been obtained on hundreds of dates during the period from 1996 to 2007. (Herein, the Wayback Machine's set of information on Zip2's website is collectively referred to as the "Historical Record.") Plaintiff's access to the Historical Record (or equivalent data) will be a material factor in his ability to litigate this case successfully.⁶

⁶ The Historical Record contains critically important information on Zip2's corporate history, personnel, press releases, copyright and trademark assertions, customers, and product

1 34. However, on July 11, 2007, Plaintiff accessed the Wayback Machine and was flabber-
2 gasted to learn that he could no longer locate or access the Historical Record. On same date, Plaintiff
3 asked three other individuals to access the Historical Record, with each individual confirming that the
4 record was unavailable. **Indeed, as of July 11, 2007, the Wayback Machine had apparently been**
5 **wiped clean of the Historical Record.**

6 35. In his subsequent investigation of the missing Historical Record, Plaintiff learned that
7 the Internet Archive permits website owners to deny the Wayback Machine permission to archive their
8 websites. This control is exercised via a specific file (named *robots.txt*) that resides on the website
9 and is created and updated by the person who maintains the website. Before the Wayback Machine
10 archives a website, it attempts to read the website's *robots.txt* file.

- 11 1. If the website does not have a *robots.txt* file, then the website is archived.
- 12 2. If a website has a *robots.txt* file, then the Wayback Machine checks to see
13 if the file grants or denies it permission to archive the website. If per-
mission is denied, then the Wayback Machine does not archive the website.

14 36. The Internet Archive's published policy for archiving websites is as follows.

15 The Internet Archive is not interested in offering access to Web sites or
16 other Internet documents whose authors do not want their materials in the
collection. To remove your site from the Wayback Machine, place a
17 *robots.txt* file at the top level of your site (e.g. www.yourdomain.com/robots.txt) and then submit your site below.

18 The robots.txt file will do two things: [¶] 1. It will remove all documents
19 from your domain from the Wayback Machine. [¶] 2. It will tell us not to
crawl your site in the future.

20 www.archive.org/about/exclude.php (underlining added).

21
22
23 pricing. The Historical Record also contains technical details related to Zip2's product,
24 including web page structure, user interface (e.g., borders, color scheme, font styles and
25 sizes, data presentation, dialog box conventions, and frames), user interaction methods,
26 data entry facilities, hyperlinks to other sites, images, mapping capabilities and limitations,
icon design, source code, source code modification dates, metatags, e-mail addresses,
27 mapping methodology, web site designer, HTML versions, table structure, scripting
languages, security, embedded documentation, customizable attributes, browser compatible,
enhancement history, "help" facilities, city coverage (i.e., For which cities did Zip2 pro-
28 vide coverage? When were cities added?), destination coverage (e.g., available restaurants,
hotels, airports, theme parks, restaurants, museums, shopping centers, and colleges), adver-
tisements, advertisers, variable naming conventions, cookie mechanisms, and watermarks.

1 37. That is, modifying a website's *robots.txt* file in a certain manner will cause all docu-
2 ments regarding the website to be removed from the Wayback Machine.

3 38. On July 13, 2007, Plaintiff verified that the Historical Record was not available from
4 the Wayback Machine.⁷ On same date, Plaintiff accessed and printed a copy of Zip2's *robots.txt* file
5 that was stored (and available to the general public) at www.zip2.com/robots.txt.

6 39. On July 16, 2007, Plaintiff filed his FAC, therein disclosing that he knew the Historical
7 Record had been removed from the Wayback Machine. On several later occasions in July 2007,
8 Plaintiff re-confirmed that the Wayback Machine did not maintain the Historical Record.

9 40. Then, in early August 2007, Plaintiff accessed the Wayback Machine and was surprised
10 to find that it did, indeed, display what was purported to be the Historical Record. Plaintiff then
11 attempted to view Zip2's *robots.txt* file to see if its contents had changed. Instead, Plaintiff found that
12 the *robots.txt* file no longer existed. It had been deleted! (As aforementioned, the Wayback Machine
13 archives websites that do not contain a *robots.txt* file.)

14 41. In summary:

- 15 1. The Historical Record was removed from the Wayback Machine soon
16 after Plaintiff filed his initial complaint.
- 17 2. Shortly after Plaintiff disclosed in the FAC that he knew the Historical
18 Record had been removed, Zip2's *robots.txt* file was deleted. This de-
19 letion would have been a signal to the Wayback Machine to commence
20 archiving Zip2's website.

21 42. Plaintiff suggests that the removal of the Historical Record was an act of spoliation
22 committed to prevent him from obtaining documents known to be crucial to this case. The subsequent
23 deletion of Zip2's *robots.txt* file may have been an attempt to conceal the details of the initial spoliation.

24 43. Of critical importance to Plaintiff is that the Wayback Machine's Zip2 files have been
25 so seriously corrupted that they are not historically accurate copies of Zip2's website. For example,
26 the version of Zip2's website that the Wayback Machine dates as February 12, 1998, now includes:
27 (1) corporate agreements that Zip2 did not enter into until February 1999; (2) magazine articles that
28 were not published until February 1999; and (3) a TV show that did not air until December 1998.

⁷ At that time, Plaintiff also viewed historical websites for Google, Yahoo, and IBM, thereby confirming that the Wayback Machine was functioning properly.

1 44. In summary, the acts of spoliation that apparently have been committed against the
2 Historical Record may have rendered it useless for discovery purposes. In some instances, in fact, the
3 spoliation may have compromised, corrupted, or destroyed the sole remaining source of historical
4 information on Zip2's website and products, thus drastically hindering Plaintiff's ability to pursue this
5 action.

6 **Plaintiff's Remedies**

7 45. It is a fundamental basis of the American judicial system that a plaintiff should have
8 the ability to complete pre-trial discovery unimpeded by a defendant's actions. "This broad right of
9 discovery is based on the general principle that litigants have a right to 'every man's evidence,'
10 [citation] and that wide access to relevant facts serves the integrity and fairness of the judicial process
11 by promoting the search for the truth." *Shoen v. Shoen*, 5 F.3d 1289, 1292 (9th Cir. 1993).

12 46. One party's suppression of evidence must be met by the strongest of responses.
13 "Where one party wrongfully denies another the evidence necessary to establish a fact in dispute, the
14 court must draw the strongest allowable inferences in favor of the aggrieved party." *National Ass'n*
15 *of Radiation Survivors v. Turnage*, 115 F.R.D. 543, 557 (N.D.Cal. 1987), citing *Cecil Corley Motor*
16 *Co. v. General Motors Corp.*, 380 F.Supp. 819, 859 (M.D. Tenn. 1974).

17 47. The spoliation has caused manifest prejudice to Plaintiff by depriving him of his right
18 to present to a jury certain evidence of the wrongful acts MUSK committed against him. Although
19 Plaintiff will seek to discover from MUSK information equivalent to that which was once contained
20 in the Wayback Machine, Plaintiff has no assurance that such duplicate material exists or, if it does
21 exist, that it will not share the fate suffered by the Wayback Machine's contents.

22 48. This massive spoliation was nothing less than a flagrant attempt to subvert the
23 judicial system and usurp the Court's right to administer justice. The Court, however, has at least
24 three powerful remedies at its disposal that are relevant in the instant action.

- 25 • The Court may enter a default judgment against the party responsible for
26 the spoliation. *Chambers v. Nasco, Inc.*, 501 U.S. 32, 45 (1991).
27 • The Court may permit the jury to draw an inference adverse to the party
28 responsible for the spoliation. *Glover v. BIC Corp.*, 6 F.3d 1318, 1329
(9th Cir. 1993).

- The Court may issue civil contempt sanctions that compensate a plaintiff for the spoliation. *Whittaker Corp. v. Execuair Corp.*, 953 F.2d 510, 516 (9th Cir. 1992).

49. Plaintiff may later move the Court to impose such remedies. In the interim, however, Plaintiff kindly requests that the Court simply consider the motive for the spoliation.

FIRST CAUSE OF ACTION
**(Brought by Plaintiff Against All Defendants
for Misrepresentation, Fraud, and Deceit)**

50. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 49 of the Complaint as though they were fully set forth herein.

51. MUSK never intended to sell IMC advertising. Instead, MUSK used the October Representations, as delineated with specificity above, to fraudulently and deceitfully induce Plaintiff to divulge confidential and proprietary information about the IP. MUSK thereafter fraudulently exploited the IP to obtain funding for Zip2, later selling the firm for \$307 million.

52. MUSK's acts satisfy the essential elements for Plaintiff to sustain a claim of fraud and deceit based upon misrepresentation. Indeed, MUSK's brother has publicly admitted that he and MUSK moved to California specifically to raise venture funds for Zip2 in mid 1995. Hence, when MUSK held meetings with Plaintiff in October 1995, MUSK: (a) knew that he had failed to raise funds in Canada for Zip2; (b) knew that he had moved to California to raise funds for Zip2; (c) knew that he had failed to raise funds in California for Zip2; and (d) intentionally misrepresented his rationale for wanting to meet Plaintiff.

53. Thereby, MUSK's actions – including his October Representations – satisfy the six essential elements for Plaintiff to sustain a claim of fraud and deceit based upon misrepresentation. (BAJI 12.31)

- a. Representation of a past or existing material fact. MUSK made the October Representations regarding his reasons for wanting to learn about Plaintiff's IP.
- b. Falsity of the representation. MUSK's October Representations were false. Indeed, MUSK had no intent to sell IMC advertising.
- c. Knowledge of the representation's falsity. MUSK knew the October Representations were false. That is, MUSK was attempting to obtain funding for Zip2 while he was falsely representing that he wanted to sell IMC advertising.

- 1 d. Intent to defraud. MUSK intended to gain access to Plaintiff's IP so
2 that he could unfairly and unlawfully use the IP to enhance Zip2.
3
4 e. Plaintiff's lack of awareness. Plaintiff took MUSK's October Represent-
5 tations at their face value, since Plaintiff had no reason to believe they
6 were untrue. Indeed, MUSK provided himself with the perfect "cover"
7 when he claimed he was a Stanford student who sought to sell IMC
8 advertising.
- 9 f. Plaintiff was damaged. Plaintiff suffered from MUSK's wrongful
10 expropriation of the IP, which expropriation permitted Zip2 to capture
11 market share that would have otherwise been gained by IMC. As
12 well, Plaintiff lost substantial time and effort in dealing with MUSK
13 during October 1995.

14 54. MUSK's actions, in concert with those of his co-conspirators, have caused monetary
15 damages to Plaintiff in an amount presently unascertainable, but within the jurisdiction of this Court.

16 **SECOND CAUSE OF ACTION**
17 **(Brought by Plaintiff Against All Defendants for Fraudulent Concealment)**

18 55. Plaintiff repeats and realleges each and every allegation contained in paragraphs
19 1 through 49 of the Complaint as though they were fully set forth herein.

20 56. MUSK's acts satisfy the five essential elements for Plaintiff to sustain a claim of
21 fraudulent concealment. (BAJI 12.35)

- 22 a. Concealment of a known fact. MUSK concealed the fact that he
23 was actively seeking funds for Zip2. He also concealed that his
24 true goal in meeting Plaintiff was to obtain access to Plaintiff's IP.
- 25 b. Duty to disclose. MUSK's pursuit of funding for Zip2, which pur-
26 suit was essentially contemporaneous with his meetings with Plain-
27 tiff, made MUSK Plaintiff's competitor. MUSK had a duty to
28 disclose such a relationship to Plaintiff.
- 29 c. Intentional concealment to defraud. MUSK's concealment was
30 done to obtain access to Plaintiff's IP. Indeed, if MUSK had dis-
31 closed his plan to raise funding for Zip2 to Plaintiff, then Plaintiff
32 would not have provided MUSK with access to the IP.
- 33 d. Plaintiff's lack of awareness. Plaintiff took MUSK's October Represent-
34 tations at their face value, since Plaintiff had no reason to believe they
35 were untrue. Indeed, MUSK provided himself with the perfect "cover"
36 when he claimed he was a Stanford student who sought to sell IMC
37 advertising.
- 38 e. Plaintiff was damaged. Plaintiff suffered from MUSK's wrongful
39 expropriation of the IP, which expropriation permitted Zip2 to
40 capture market share that would have otherwise been gained by IMC.
41 As well, Plaintiff lost substantial time and effort in dealing with
42 MUSK during October 1995.

1 57. MUSK's actions, in concert with those of his co-conspirators, have caused monetary
2 damages to Plaintiff in an amount presently unascertainable, but within the jurisdiction of this Court.

3 **THIRD CAUSE OF ACTION**
4 **(Brought by Plaintiff Against All Defendants for Conspiracy to Defraud)**

5 58. Plaintiff repeats and realleges each and every allegation contained in paragraphs
6 1 through 49 of the Complaint as though they were fully set forth herein.

7 59. MUSK's statement that he was a "co-founder" of Zip2 (§ 22) is a clear admission that
8 the fraud and other wrongful acts he perpetrated against Plaintiff were done in concert with one or more
9 other individuals. Although the identities of those individuals are not known with certainty to Plaintiff,
10 they will be ascertained during the course of this litigation. By their actions, MUSK and his co-
11 conspirators planned and conspired to defraud Plaintiff.

12 60. MUSK's actions, in concert with those of his co-conspirators, have caused monetary
13 damages to Plaintiff in an amount presently unascertainable, but within the jurisdiction of this Court.

14 **FOURTH CAUSE OF ACTION**
15 **(Brought by Plaintiff Against All Defendants**
16 **for Misappropriation of Trade Secrets)**

17 61. Plaintiff repeats and realleges each and every allegation contained in paragraphs
18 1 through 49 of the Complaint as though they were fully set forth herein.

19 62. By his aforementioned actions, MUSK misappropriated Plaintiff's IP, which IP
20 included certain of Plaintiff's trade secrets, including merchant usage data and plans for future product
21 enhancements. As such, MUSK's actions violated California's Uniform Trade Secrets Act, Cal.
22 Civ. Code §§ 3426 *et seq.* MUSK's actions were willful, deliberate, and malicious, and they were
23 made with the knowledge that they would harm Plaintiff.

24 63. MUSK's actions, in concert with those of his co-conspirators, have caused monetary
25 damages to Plaintiff in an amount presently unascertainable, but within the jurisdiction of this Court.

26 **FIFTH CAUSE OF ACTION**
27 **(Brought by Plaintiff Against All Defendants for**
28 **State Unfair Competition and Misappropriation)**

29 64. Plaintiff repeats and realleges each and every allegation contained in paragraphs
30 1 through 49 of the Complaint as though they were fully set forth herein.

65. As aforementioned, MUSK's conduct included: (a) the unlawful misappropriation of trade secrets; (b) unfair, anticompetitive acts to obtain Plaintiff's merchant usage data and related information; and (c) the fraudulent concealment of MUSK's on-going effort to raise funds for Zip2.

66. Plaintiff contends that such conduct by MUSK constitutes unlawful, unfair, and fraudulent business practices within the meaning of Cal. Bus. & Prof. Code §§ 17200 *et seq.* As well, Plaintiff asserts that MUSK's actions were willful, deliberate, and malicious, and that they were made with the knowledge that they would harm Plaintiff.

67. MUSK's actions, in concert with those of his co-conspirators, have caused monetary damages to Plaintiff in an amount presently unascertainable, but within the jurisdiction of this Court.

SIXTH CAUSE OF ACTION

**(Brought by Plaintiff Against All Defendants for
Restitution, Disgorgement, and Unjust Enrichment)**

68. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 49 of the Complaint as though they were fully set forth herein.

69. MUSK and his co-conspirators have benefited greatly from their aforementioned wrongful acts. Plaintiff requests that the Court assign to him all funds arising from MUSK's sale of Zip2, since that firm owed its very existence to the wrongful acts.

70. Further, since MUSK used the profits from Zip2 to form PayPal, Plaintiff also asks the Court to assign to him all funds arising from MUSK's sale of PayPal.

71. Plaintiff asks the Court to right defendants' wrongful acts by way of restitution and/or disgorgement, finding that defendants have unjustly enriched themselves at Plaintiff's expense.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief against defendants for all causes of action set forth above as follows:

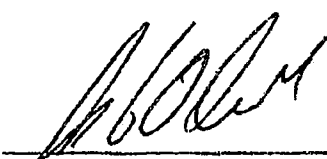
1. For damages according to proof;
2. For an award of punitive and exemplary damages as may be proper;
3. For restitution and disgorgement;
4. For sanctions (or equivalent) as a remedy for spoliation;
5. For declaratory and injunctive relief;

VERIFICATION

I, John O'Reilly, declare under penalty of perjury, that the following statements are true:

1. I am the Plaintiff in the Second Amended Complaint;
2. I wrote the Second Amended Complaint;
3. To the best of my knowledge, information, and belief, based upon reasonable inquiry, the Second Amended Complaint is well founded in fact and is warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
4. The allegations and other factual contentions have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
5. The Second Amended Complaint is not being filed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Executed this 5th day of October 2007.



John O'Reilly
Plaintiff, In Pro Per

PROOF OF SERVICE ENDORSED FILED

STATE OF CALIFORNIA, COUNTY OF SANTA CLARA

OCT-5 07

I am employed in the County of Santa Clara, State of California. I am over the age of 18 and am not a party to the within action. My business address is 13145 Byrd Lane, Los Altos Hills, CA 94022.

On the date below, I caused to be served by mail the following document(s).

SECOND AMENDED COMPLAINT

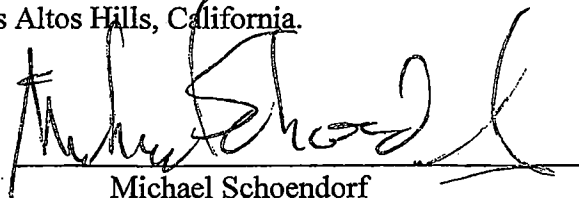
On the following party:

Mr. Adam C. Belsky
Gross & Belsky
180 Montgomery Street
Suite 2200
San Francisco, CA 94104

I placed a true copy of the above-named documents in an envelope, with postage thereon fully prepaid. I then sealed the envelope and placed it for collection and mailing in the United States mail at Los Altos, California, following my ordinary business practices, whereby mail is deposited in the United States Postal Service the same day as it is placed for collection.

I declare under penalty of perjury under the laws of the State of California that the aforementioned is true and correct.

Executed on October 5, 2007, at Los Altos Hills, California.



Michael Schoendorf



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STATE OF CALIFORNIA
SUPERIOR COURT OF THE COUNTY OF SANTA CLARA
UNLIMITED JURISDICTION

JOHN O'REILLY,

Petitioner,

vs.

107 CV 083172

ELON MUSK,

Respondent./

DEPOSITION OF NORMAN GODHINHO
SAN FRANCISCO, CALIFORNIA
THURSDAY, APRIL 2, 2009

REPORTED BY: E. BRUIHL, CSR NO. 3077

1 --000--

2 STATE OF CALIFORNIA

3 SUPERIOR COURT OF THE COUNTY OF SANTA CLARA

4 UNLIMITED JURISDICTION

5
6 JOHN O'REILLY,

7 Petitioner,

8 vs.

107 CV 083172

9 ELON MUSK,

10 Respondent./

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13
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19
20 Deposition of NORMAN GODHINHO on behalf of
21 petitioner on THURSDAY, APRIL 2, 2009, at 12:00
22 p.m., 1490 El Camino Real, Palo Alto, California,
23 before Easteller Bruhl, a licensed and Certified
24 California Reporter for Star Reporting Service,
25 Inc., 703 Market Street, San Francisco, California.

1 and, you know, talked about what he was doing, what
2 he was planning, that he had developed this software
3 for the internet and the Yellow Pages and so on and,
4 you know, exact details, I can't remember, but it
5 was something that I didn't know much about from the
6 chip industry, and I said, "sounds good but I know
7 very little about it" and then he was planning to do
8 a Ph.D. at Stanford and admission but he was trying
9 to decide whether he should start this company or go
10 into his Ph.D. and I, personally, as a guy who
11 started in the '70s, I said -- feel strongly about
12 it.

13 You know, "go for it" and then I think he
14 came back and, eventually, I said I'll give him some
15 money to start, a small amount of money, you know?

16 I loaned him some money to get him started
17 and so that's how it all came.

18 Q. Thank you, and you said it was late 1995?

19 A. I think if I recall.

20 Q. Can you recall?

21 A. It was late 1995 but the money I didn't -- I
22 mean that was the first conversation and then,
23 subsequently, it was '96 and, you know, he came over
24 and then I met his brother and --

25 Q. Okay. Hold on.

1 A. -- Kimbal.

2 Q. You are getting ahead of me.

3 A. Okay.

4 Q. So, you had a first meeting with him sometime
5 in late 1995, correct?

6 A. Yes. That's my recollection.

7 Q. I understand.

8 A. You know, I could be wrong on the exact dates
9 but I don't recall. It was sometime in that time
10 frame.

11 Q. I understand it was a long time ago, so I'm not
12 trying to pin you down to the exact --

13 A. Yeah, but I don't keep a diary of all these
14 things.

15 Q. That's very understandable, but I'm just trying
16 to get a sense of what you do recall and to the
17 extent that you recall the date if not, you know, so
18 it sounds like sometime in late 1995 was your first
19 meeting.

20 He told you about the company and when --
21 do you recall when the next meeting was? Was that
22 before you met Kimbal?

23 A. I don't recall.

24 Q. Okay.

25 A. I mean he may have come back again or I may

1 have called his -- I think that at some point he got
2 an office here in Palo Alto and I visited that
3 office but I was just going to the call --

4 Q. Yeah, I understand.

5 A. -- but he did come over I know a few times and
6 but the exact dates, I wouldn't know.

7 Q. Do you think you met Kimbal at some time maybe
8 in the late 1995 time period?

9 A. Probably in '96.

10 Q. Early in '96?

11 A. Yeah, could be. Yeah.

12 Q. And at that first meeting, did Elon -- let me
13 rephrase that. Did Elon approach you for a loan?

14 A. I think he said he wanted to start the company
15 and he needed money because he didn't have very much
16 money, I guess, and that he had some other investors
17 as well, other people and others interested and --

18 Q. Did he tell you who those people were?

19 A. At that time, I didn't -- I don't know if I can
20 remember that. He told me a lot but I think I just
21 said, "hey, I'll give you a small amount of money."

22 I think it was a small amount, something
23 like \$10,000 or something like that, and "I'll loan
24 it to you," and then, you know, "if you raise money,
25 then I will put money into stock into that company."

1 A. He had some other people.

2 I think his brother, Kimbal, was there and
3 there was some other people there but I can't
4 remember.

5 Q. Thank you.

6 Now, when he came to you for the loan, did
7 he mention any competitors at that time, competitors
8 with relation to his business -- his idea?

9 A. I don't recall.

10 Q. Did he ever mention any work that he was doing
11 -- when I say "he", I'm referring to Elon. Did he
12 mention any work that he was doing at the Stanford
13 computer lab?

14 A. I don't recall. I know that he was -- had got
15 admission into Stanford University through a Ph.D.

16 Q. And how do you know that?

17 A. He told me that.

18 In fact, that was one of the things that he
19 had in hand. He said he had a scholarship on a
20 grant to do this Ph.D. and, on the other side, he
21 wanted to start this company and he didn't have the
22 money and it was, of course, risky as with any
23 startup and he asked for my advice, you know, and my
24 advice was, "hey, if you feel strongly about it, go
25 for it and I'll give you a little money to get

1 started."

2 Q. Do you recall what he was -- what he was going
3 to study at Stanford?

4 A. I think it was more in Physics, something in
5 Physics.

6 Q. Had he already started? Or he was --

7 A. No, I don't think he was started. He had
8 admission.

9 Again, these are all recollections and I
10 can't, you know -- hold me to those but my and that
11 was, you know, about that time.

12 He may have started in September/October is
13 the, you know, and he may have -- he got admission.
14 He got a grant, and he may have started and he was
15 debating whether he should start this company or go
16 into his Ph.D. which was not quite in this area --

17 Q. Okay.

18 A. -- but I think. That's my recollection.

19 Q. And now, did you ever lend Elon more money?

20 A. I don't think I lent him more money but I put
21 in more money when they raised -- when they had
22 funding. I don't recall that I lent him more money.
23 It's possible I did.

24 I probably did but then I did -- I know
25 that in the end, I put in more money like \$50,000.

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REPORTER'S CERTIFICATE

I, EASTELLER BRUIHL, CSR NO. 3077, Certified
Shorthand Reporter, certify;

That the foregoing proceedings were taken
before me at the time and place therein set forth,
at which time the witness was put under oath by me;

That the testimony of said witness, the
questions propounded, and all objections and
statements made at the time of the examination were
recorded stenographically by me and were thereafter
transcribed;

That the foregoing is a true and correct
transcript of my shorthand notes so taken.

I further certify that I am not a relative or
employee of any attorney of the parties nor
financially interested in the action.

I declare under penalty of perjury under the
laws of California that the foregoing is true and
correct.

Dated this 7TH day of APRIL 2009.

EASTELLER BRUIHL, CSR NO. 3077

REPORTER'S CERTIFICATION OF CERTIFIED COPY

I, EASTELLER BRUIHL, CSR NO. 3077, a Certified Shorthand Reporter in the State of California, certify that the foregoing Pages 1 through 39, constitute a true and correct copy of the original deposition of NORMAN GODINHO, taken on THURSDAY, APRIL 2, 2009.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated this 7TH day of APRIL 2009.

EASTELLER BRUIHL, CSR NO. 3077



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STATE OF CALIFORNIA
SUPERIOR COURT OF THE COUNTY OF SANTA CLARA
UNLIMITED JURISDICTION

JOHN O'REILLY,

Petitioner,

vs.

107 CV 083172

ELON MUSK,

Respondent./

DEPOSITION OF DEREK PROUDIAN
SAN FRANCISCO, CALIFORNIA
WEDNESDAY, MARCH 25, 2009

REPORTED BY: E. BRUIHL, CSR NO. 3077

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STATE OF CALIFORNIA

SUPERIOR COURT OF THE COUNTY OF SANTA CLARA

UNLIMITED JURISDICTION

JOHN O'REILLY,

Petitioner,

vs.

107 CV 083172

ELON MUSK,

Respondent./

Deposition of DEREK PROUDIAN on behalf of

petitioner on WEDNESDAY, MARCH 25, 2009, at 10:00

a.m., Rao, Ongaro, Burt & Tilakos, 595 Market

Street, Suite 610, San Francisco, California, before

Easteller Bruhl, a licensed and Certified

California Reporter for Star Reporting Service,

Inc., 703 Market Street, San Francisco, California.

1 a different role in the time period that you are
2 concerned about which was the -- from the first
3 meeting of the Zip2 entrepreneur was MDV through the
4 financing of that event.

5 My role was primarily one of the supporting
6 John in whatever he asked me to do. Once we made
7 the investment and I went on the Board, my role
8 became very active to help Bill and the management
9 team and go build the Company but that was sort of
10 in a subsequent -- subsequent role.

11 So, I can't recall anything the -- about
12 other than my -- I do recall that Elon was, I
13 believe -- I can't remember the universities but he
14 had been... was it Japan? Or some other university
15 that was a pretty good school and then he had been
16 at Stanford in some kind of capacity and it was in
17 the Physics Department or something like that, is
18 what I was told..

19 Q. So, did he tell you that he was at UPenn or
20 Wharton UPenn?

21 A. I can't remember how I had that impression but
22 it was either in his bio or he told me or somehow I
23 had the impression that he had been at Penn.

24 Q. And did you have any the impression that he was
25 a graduate? That he had graduated?

1 A. I had that impression.

2 Q. And do you remember on what basis you formed
3 that impression?

4 A. I don't recall.

5 Q. And you said that you were aware he was a
6 Stanford student.

7 A. My recollection is that he had some affiliation
8 with the Stanford Physics Department.

9 Q. Do you know what sort of affiliation? Do you
10 remember?

11 A. I don't remember. I can't recall now. I'm
12 sorry.

13 Q. Do you remember if he ever told you he was a
14 Stanford student?

15 A. I don't recall. I had that impression.

16 Q. You had the impression but you are saying you
17 don't remember on what basis?

18 A. At this time, I no longer recall. I'm sorry.

19 Q. Do you recall Elon ever telling you that he had
20 a degree in Physics?

21 A. I don't recall, although my -- again, this is
22 impressions from a long time ago.

23 My impression was that he wouldn't have had
24 a degree in Physics because he was, you know, he had
25 gone to Stanford and was -- and basically dropped

1 out.

2 Q. And why do you think -- what made you -- what
3 gave you the impression that he had gone to Stanford
4 and dropped out?

5 A. I can no longer -- I can't recall at this point
6 in time.

7 My... Again, these are impressions of what
8 I thought some time ago but my impression at the
9 time was that Elon like a number of people in that
10 time period had decided that the internet was this
11 next big thing and that they were going to leave
12 their current jobs or their current situations to go
13 be internet entrepreneurs.

14 Q. I'm just trying to figure out what would give
15 you that impression, you know, whether that was in
16 his bio or he give you that impression?

17 A. I can't recall at this time.

18 Q. Okay, and did he ever tell you that he had a
19 degree in Computational Physics?

20 A. I can't recall.

21 Q. Okay.

22 Then you mentioned that you are in
23 communication with Kimbal? You have been in
24 communication with Kimbal?

25 A. Sure.

1 ---000---

2 REPORTER'S CERTIFICATE

3
4 I, EASTELLER BRUIHL, CSR NO. 3077, Certified
5 Shorthand Reporter, certify;

6 That the foregoing proceedings were taken
7 before me at the time and place therein set forth,
8 at which time the witness was put under oath by me;

9 That the testimony of said witness, the
10 questions propounded, and all objections and
11 statements made at the time of the examination were
12 recorded stenographically by me and were thereafter
13 transcribed;

14 That the foregoing is a true and correct
15 transcript of my shorthand notes so taken.

16 I further certify that I am not a relative or
17 employee of any attorney of the parties nor
18 financially interested in the action.

19 I declare under penalty of perjury under the
20 laws of California that the foregoing is true and
21 correct.

22 Dated this 30th day of MARCH 2009.

23
24 EASTELLER BRUIHL, CSR NO. 3077
25

REPORTER'S CERTIFICATION OF CERTIFIED COPY

I, EASTELLER BRUIHL, CSR NO. 3077, a Certified Shorthand Reporter in the State of California, certify that the foregoing Pages 1 through 93, constitute a true and correct copy of the original deposition of DEREK PROUDIAN taken on WEDNESDAY, MARCH 25, 2009.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated this 30TH day of MARCH, 2009.

EASTELLER BRUIHL, CSR NO. 3077



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STATE OF CALIFORNIA
SUPERIOR COURT OF THE COUNTY OF SANTA CLARA
UNLIMITED JURISDICTION

JOHN O'REILLY,

Petitioner,

vs.

107 CV 083172

ELON MUSK,

Respondent./

DEPOSITION OF JIM AMBRAS
SAN FRANCISCO, CALIFORNIA
THURSDAY, APRIL 2, 2009

REPORTED BY: E. BRUIHL, CSR NO. 3077

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STATE OF CALIFORNIA

SUPERIOR COURT OF THE COUNTY OF SANTA CLARA

UNLIMITED JURISDICTION

JOHN O'REILLY,

Petitioner,

vs.

107 CV 083172

ELON MUSK,

Respondent./

Deposition of JIM AMBRAS on behalf of

petitioner on THURSDAY, APRIL 2, 2009, at 9:00 a.m.,

1490 El Camino Real, Palo Alto, California, before

Easteller Bruhl, a licensed and Certified

California Reporter for Star Reporting Service,

Inc., 703 Market Street, San Francisco, California.

1 that point?

2 A. I was working at Silicon Graphics at the time
3 and was considering moving to a small startup that
4 would be involved in web based deck knowledge and
5 that was the profile of Zip2.

6 So, I was not looking for a job at the time
7 but based upon Derek and that I have a high regard
8 for him and he recommended that I make this, I
9 thought this would be an opportunity worth my time.

10 Q. All right. Do you remember you said you met
11 with the owners of Zip2.

12 A. I met with the founder of Zip2.

13 There were three. There were Elon Mosk,
14 his brother Kimbal Mosk and Greg Kouri that night I
15 came in after work on a week night and I interviewed
16 with all three of them.

17 Q. And do you remember the date, approximately?

18 A. It was around April of '96, late March or
19 April, that time frame.

20 Q. Okay. Do you remember what -- can you tell me
21 everything you remember about the meeting?

22 A. Yeah.

23 I came in around 6:00 or 7:00 p.m. and,
24 initially, I met Elon and Elon told me what Zip2 was
25 about, what they were doing which was an online

1 directions before he worked for Zip2?

2 A. No.

3 Q. Okay.

4 I'm going to have the Court Reporter mark
5 as Exhibit 3....

6 Counsel, this is the article -- first page
7 of the article from The Daily Duck. This was from a
8 previous deposition?

9 MS. NUGENT: I have that. Thank you.

10 (THE DAILY DUCK ARTICLE MARKED EXHIBIT NO. 3)

11 Can you just take a look at this document
12 and then focus on the last paragraph and tell me
13 when you are through.

14 Can you read the first sentence of the last
15 paragraph, starting with "Kimbal says"?

16 A. "After college, my brother and
17 I moved to California. We got
18 jobs at an early internet
19 startup that provided on-line
20 maps and directions."

21 Q. Do you have any reason to dispute that
22 sentence?

23 MS. NUGENT: Objection, lacks
24 foundation.

25 THE WITNESS: That's the first time I

1 have heard of that.

2 MS. KOHN:

3 Q. Okay.

4 Did Elon ever tell you that he was a
5 graduate of any college?

6 A. Yes.

7 Q. And where did he tell you he graduated from?

8 A. Most recently a boarding -- yeah, a board --
9 the University of Pennsylvania, a boarding school
10 there.

11 Q. When did he tell you that he had -- when did he
12 tell you that he had graduated? That's confusing.

13 A. That is ambiguous.

14 Q. When did you have the conversation that you
15 learned he was a graduate?

16 A. I don't recall.

17 Q. Do you recall when he told you he had, indeed,
18 in fact, graduated from college?

19 A. Early on when I joined Zip2 but I don't recall
20 the date, being that this was thirteen years ago.

21 Q. Did he ever tell you that he was or had been a
22 Stanford student?

23 A. Yes, and, in fact, he had, I think, mentioned
24 that during the night of the interview that he had
25 come to the Bay Area to attend Stanford, a graduate

1 school.

2 Q. Was he -- as far as you knew, was he in

3 Stanford graduate school when you met him?

4 A. My understanding was that he had dropped out to
5 start Zip2.

6 Q. And was that understanding based on what he
7 told you?

8 A. It was based upon what he told me and based
9 upon what other people had told me such as Derek
10 Proudian.

11 Q. Did he tell you what he was studying at
12 Stanford?

13 A. High energy physics.

14 Q. Did he ever tell you that he had a degree in
15 Physics?

16 A. No.

17 Q. And since 1999, have you had any communication
18 with Elon Mosk?

19 A. Yes.

20 Q. Well, it has been a long time. So, what's your
21 most recent communication with him?

22 A. The most recent communication was I asked him
23 for basic information about what this lawsuit was,
24 that -- after having received a contact by John
25 O'Reilly.

- - ○○○ - -

REPORTER'S CERTIFICATE

I, EASTELLER BRUIHL, CSR NO. 3077, Certified
Shorthand Reporter, certify;

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me;

That the testimony of said witness, the questions propounded, and all objections and statements made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am not a relative or employee of any attorney of the parties nor financially interested in the action.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Dated this 6th day of APRIL 2009.

EASTELLER BRUIHL, CSR NO. 3077

1 REPORTER'S CERTIFICATION OF CERTIFIED COPY

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I, EASTELLER BRUIHL, CSR NO. 3077, a Certified
Shorthand Reporter in the State of California,
certify that the foregoing Pages 1 through 53,
constitute a true and correct copy of the original
deposition of JIM AMBRAS taken on THURSDAY, APRIL 2,
2009.

I declare under penalty of perjury under the
laws of the State of California that the foregoing
is true and correct.

Dated this 6TH day of APRIL 2009.

EASTELLER BRUIHL, CSR NO. 3077



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STATE OF CALIFORNIA
SUPERIOR COURT OF THE COUNTY OF SANTA CLARA
UNLIMITED JURISDICTION

JOHN O'REILLY,

Petitioner,

vs.

107 CV 083172

ELON MUSK,

Respondent./

DEPOSITION OF CRAIG MOHR
SAN FRANCISCO, CALIFORNIA
THURSDAY, APRIL 2, 2009

REPORTED BY: E. BRUIHL, CSR NO. 3077

--000--

STATE OF CALIFORNIA

SUPERIOR COURT OF THE COUNTY OF SANTA CLARA

UNLIMITED JURISDICTION

JOHN O'REILLY,

Petitioner,

vs.

107 CV 083172

ELON MUSK,

Respondent./

Deposition of CRAIG MOHR on behalf of

petitioner on THURSDAY, APRIL 2, 2009, at 1:00 p.m.,

1490 El Camino Real, Palo Alto, California, before

Easteller Bruhl, a licensed and Certified

California Reporter for Star Reporting Service,

Inc., 703 Market Street, San Francisco, California.

1 A. No.

2 Q. Did Elon ever tell you that he was a graduate
3 of any college?

4 A. No.

5 Q. Did he ever tell you that he was a Stanford
6 student?

7 A. I think he did.

8 It's -- you know, Elon and I didn't really
9 talk very much. He wasn't a very talkative person,
10 and so I can't say that he told me anything about
11 his -- his college career. I don't know. I'm
12 sorry.

13 Q. But you had an impression that he was a
14 Stanford student?

15 A. That's just it. There was mention of Stanford
16 but I don't know whether it had to do with --
17 whether it had anything to do with him saying that
18 he had gone there.

19 Q. Okay. Did he ever tell you that he had a
20 degree in Computational Physics?

21 A. No.

22 Q. Have you had any communication with Elon since
23 1999?

24 A. No.

25 Q. What about Kimbal? Have you had any

--000--

REPORTER'S CERTIFICATE

I, EASTELLER BRUIHL, CSR NO. 3077, Certified
Shorthand Reporter, certify;

That the foregoing proceedings were taken
before me at the time and place therein set forth,
at which time the witness was put under oath by me;

That the testimony of said witness, the
questions propounded, and all objections and
statements made at the time of the examination were
recorded stenographically by me and were thereafter
transcribed;

That the foregoing is a true and correct
transcript of my shorthand notes so taken.

I further certify that I am not a relative or
employee of any attorney of the parties nor
financially interested in the action.

I declare under penalty of perjury under the
laws of California that the foregoing is true and
correct.

Dated this 7TH day of APRIL 2009.

EASTELLER BRUIHL, CSR NO. 3077

1 REPORTER'S CERTIFICATION OF CERTIFIED COPY

2
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6
7 I, EASTELLER BRUIHL, CSR NO. 3077, a Certified
8 Shorthand Reporter in the State of California,
9 certify that the foregoing Pages 1 through 72,
10 constitute a true and correct copy of the original
11 deposition of CRAIG MOHR, taken on THURSDAY, APRIL
12 2, 2009.

13 I declare under penalty of perjury under the
14 laws of the State of California that the foregoing
15 is true and correct.

16
17 Dated this 7TH day of APRIL, 2009.

18
19
20
21 EASTELLER BRUIHL, CSR NO. 3077
22
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STATE OF CALIFORNIA
SUPERIOR COURT OF THE COUNTY OF SANTA CLARA
UNLIMITED JURISDICTION

JOHN O'REILLY,

Petitioner,

vs.

107 CV 083172

ELON MUSK,

Respondent./

DEPOSITION OF ELON MUSK
LOS ANGELES, CALIFORNIA
THURSDAY, MAY 7, 2009

COPY

REPORTED BY: E. BRUIHL, CSR NO. 3077

1 Nonappearance, Dr. O'Reilly got a telephone call.
2 They indicated they'd be here in about fifteen
3 minutes.

4 [RECESS]

5 MR. ONGARO: Swear in the witness,
6 please.

7
8 ELON REEVE MUSK,
9 having first been duly sworn and/or affirmed to tell
10 the truth, the whole truth and nothing but the
11 truth, under oath, testified as follows:
12

13 EXAMINATION BY MR. ONGARO

14 Q. Good morning, sir.

15 Can you please state and spell your full
16 name for the record?

17 A. Elon Reeve Musk, E-l-o-n, R-e-e-v-e, M-u-s-k.

18 Q. And, Mr. Musk, have you had your deposition
19 taken before?

20 A. Only once.

21 Q. Only once?

22 A. Yeah.

23 Q. Okay, and I take it you have had the
24 opportunity to meet with your attorney to prepare
25 for today's deposition?

1 Q. And you were talking -- talked about some
2 litigation?

3 A. About an interview venture. It was a long
4 interview. We might have touched on litigation.

5 Q. Okay.

6 Okay. Do you recognize what we have marked
7 as Exhibit 4?

8 (STEPHEN SAPERSTEIN NOVEMBER 7, 2008

9 CASE NO. 107CV083172 DOCUMENT

10 MARKED EXHIBIT NO. 4)

11 I don't intend for you to read the whole
12 document, sir. So; feel free to flip through it and
13 make yourself comfortable.

14 MR. LEDAHL: Do you have another copy?

15 THE WITNESS: I haven't seen this in a
16 long long time. This is an horrendous business
17 plan.

18 MR. ONGARO:

19 Q. And whose business plan is this?

20 A. This is a business plan that was written
21 between -- with Steve Saperstein, Kimball and myself
22 and I think Greg may have contributed as well. It's
23 embarrassingly bad.

24 Q. And this was so all three of you had input into
25 this?

1 A. Well, this is four people.

2 Q. I'm sorry. All four of you?

3 A. I think so.

4 Q. Okay, and there are portions that -- I think
5 that you wrote?

6 A. Yes.

7 Q. Okay, and this was the something that you wrote
8 that's to disseminate out into the venture capital
9 world, is that correct?

10 A. Well, yeah.

11 Anyone we pitched to, we would offer the
12 business plan but, as I mentioned earlier, what was
13 always remarkable is that you mentioning lack of
14 interest of venture capitalists and business plans.

15 Q. But you did, in fact, give this to some
16 entities, correct?

17 A. I didn't give this to any entities.

18 Q. But Zip2 --

19 A. Steve Saperstein may have given it to people.

20 Q. Right, and your brother may have given that to
21 people as well, correct?

22 A. He may have.

23 MR. LEDAHL: Calls for speculation.

24 MR. ONGARO.

25 Q. And you wanted to make sure that everything in

1 this document was accurate because you guys were, in
2 essence, looking for money based on this document.

3 Is that correct?

4 A. Certainly, the aspiration would have been
5 accuracy. I mean, reading this thing, it's
6 ludicrously bad.

7 Q. Well, I'm not whether the contents was good or
8 bad.

9 I'm asking you: It's true that it was your
10 intent to make sure that the information that was
11 being disseminated was true and correct?

12 A. Of course.

13 Q. Now, turning back to Exhibit 3, which is this
14 exhibit --

15 A. Is this the same as the Executive Summary on...
16 is it the same one? No, no, it is different,
17 slightly different.

18 Q. Going back to Exhibit 3 and I want to put you
19 into focus that if somebody was given Exhibit No. 3
20 in January of 1986, would it be true that Global
21 Link had developed a product on the internet
22 duplicating the Real World Cities to create the next
23 generation of local business advertising at that
24 point in time, January of 1996?

25 A. I think that would probably be a generous

1 A. No. I don't recall.

2 Q. Okay.

3 (POWER POINT FLIP-THROUGHS

4 MARKED EXHIBIT NO. 5)

5 Going back to what we have marked as
6 Exhibit No. 5, do you recognize this document?

7 A. No.

8 Q. Was this the flip-throughs that you were
9 talking about your brother would present to the
10 venture folks?

11 A. I don't know.

12 MR. LEDAHL: Calls for speculation.

13 MR. ONGARO:

14 Q. You don't know? Do you know whether what we
15 have marked as Exhibit No. 5 ive was ever given to
16 potential customers?

17 MR. LEDAHL: Calls for speculation.

18 THE WITNESS: I don't know.

19 MR. ONGARO:

20 Q. Okay, and going to the first page, it says:

21 "Interactive Local Business
22 Directory, Natural Language
23 Search Engine incorporated
24 Into a powerful Geographical
25 Information System."

1 Did -- in 1996, January 1996, did Zip2 have
2 a natural language search engine?

3 A. Not -- well, natural language means different
4 things to different people.

5 Q. It has got -- let me try it this way.

6 The industry has a certain definition of a
7 natural language search engine, correct?

8 A. There is a -- well, there are different
9 interpretations of natural language engines and, for
10 instance, geography is considered by some to be a
11 natural language search engine but not by others and
12 I think how else would it have been considered by
13 some to be a natural search engine but not by
14 others.

15 Q. Is there a generally accepted definition that
16 you are aware of in the industry for what a natural
17 language search engine was?

18 MR. LEDAHL: Asked and answered.

19 THE WITNESS: No.

20 MR. ONGARO:

21 Q. Okay.

22 Okay. I want to just turn you to the next
23 page. I just want you to take a look at some of the
24 titles of these different slides or flip-throughs.

25 The first one is "Focused Internet

1 Advertising vs. Generic Presence", and the next, "A
2 simple, Exciting Business Search System". The next
3 is "The System Tools". The next is "Target Market-
4 Internet Users". The next is "Target Market-
5 Internet Businesses". The next is "Potential
6 Marketing Strategies". The next is "Competition".

7 Looking at those headings, does that
8 refresh your recollection at all that this was the
9 flip-through that you were referring and your
10 brother would present to potential folks?

11 A. You know, it is hard to tell because the
12 flip-through -- was it some other flip-through? You
13 know, what date and time, I don't know.

14 Q. Okay.

15 A. I mean, it is a flip-through, fourteen-year old
16 flip-through range and I don't know.

17 Q. Does it look like it is familiar as the
18 flip-through your brother was using?

19 MR. LEDAHL: Vague and ambiguous.

20 THE WITNESS: I would say it is
21 familiar.

22 MR. ONGARO:

23 Q. Okay, and given that the headings does not
24 refresh your recollection, is this something that
25 would have been used as a tool to raise capital?

1 MR. LEDAHL: Asked and answered, calls
2 for speculation.

3 THE WITNESS: It is something that
4 could have been used. Was it used? I don't know.

5 MR. ONGARO:

6 Q. Okay.

7 Now, going through the Competition page
8 about midway in, keep going. Starting from the one
9 on top that says "Competition".

10 A. Uh-huh, I'm there.

11 Q. Okay. Here, it indicates that Nynex --

12 A. "Nynex".

13 Q. -- Nynex is one of the potential competitors,
14 correct?

15 MR. LEDAHL: According to this
16 document?

17 THE WITNESS: According to this
18 document, yes.

19 MR. ONGARO:

20 Q. Okay, and you put that in your business plan,
21 correct?

22 MR. LEDAHL: Objection. Misstates the
23 testimony.

24 THE WITNESS: I don't recall.

25 MR. ONGARO:

1 Q. Okay. Let's turn to --

2 A. I mean.

3 Q. And did you back in '96 identify Nynex as one
4 of your potential competitors?

5 A. It appears to be the case.

6 Q. Okay, and then three bullet points down, it
7 says a "number of smaller unfundeds". Do you see
8 that?

9 A. Yes.

10 Q. And do you know who the small unfundeds were
11 that you were referring to or that Zip2 was
12 referring to in this Competition?

13 MR. LEDAHL: Lacks foundation.

14 THE WITNESS: Not really.

15 There were, you know, several other
16 start-ups, you know, that were trying to do
17 something similar as it was the case particularly in
18 Tech manager.

19 MR. ONGARO:

20 Q. Well, as you sit here today, were there any
21 others?

22 A. Big Book.

23 Q. Okay. Any others?

24 A. Well, it depends on which point in time.

25 There was kind of a Map Quest. I'll just

1 say as I think back here when we came to the
2 internet, I believe there was a 411. I mean that's
3 -- I don't know. It was so long ago.

4 Q. Do you remember this document from O'Reilly's
5 company?

6 A. I don't, actually.

7 Q. Do you ever remember meeting Dr. O'Reilly?

8 A. You know, it is one of those things do I
9 remember or don't I?

10 I met so many people in that time frame. I
11 certainly don't remember him, particularly.

12 Q. Now, turning to the last page of this
13 flip-through, it has got the biographies and,
14 technically, the one identity that was in the
15 business plan.

16 When you did the business plan and you
17 converted it -- actually, why don't we do this? Why
18 don't we go to Page 14 of the business plan which is
19 Page 4?

20 A. More bad news.

21 Q. Sir, I would like you to turn to Exhibit No. 4
22 for me, the last page which should be Page 14 and
23 you had previously testified that you wrote portions
24 of this business plan.

25 I take it that you provided or wrote the

1 information regarding your background for the
2 business plan, is that correct?

3 A. Probably. That's what they contributed to.

4 Q. And do you have -- as you sit here today, do
5 you have any recollection of anyone else writing
6 your biography for the business plan?

7 A. No. That doesn't mean that I wrote it.

8 Q. And as you read the bio for you and the
9 business plan on Page 14, is everything in that bio
10 true and correct?

11 A. Yeah. Yes.

12 Q. Okay. So, you received a B.S. in Computational
13 Physics from Penn?

14 A. Yeah.

15 Q. Okay, and when you worked at Microsoft advanced
16 products --

17 A. Actually, I should be clear about that.

18 So, I obtained the one Graduate degree in
19 Business and Physics but and an agreement with the
20 -- with the University of Pennsylvania.

21 They said that I could have -- I could
22 complete the English and History credit when I was
23 no longer a student at Stanford. So, they would
24 delay transmitting the degree until I had done that.

25 Q. Granting you a B.S. Degree in -- granting you

1 A. B-l-a-s-t-a-r.

2 Q. Okay, and then it says your first company was
3 founded at age eighteen. What company was that?

4 A. That was a company at Queens, just reselling
5 computer equipment.

6 Q. Okay.

7 Did you ever hear of a company called
8 "Remote Telecom"?

9 A. That name rings a bell.

10 Q. Okay, and do you recall -- well, do you recall
11 when you first heard about Remote Telecom?

12 A. No.

13 Q. Do you have any recollection of what they do?

14 A. Not really.

15 Q. Do you have any recollection of applying for
16 work there?

17 A. No.

18 Q. Okay, and in January of '96 had you heard of
19 the Internet Merchant channel?

20 A. I don't remember that.

21 Q. Okay.

22 (DEFENDANT'S RESPONSES TO PLAINTIFF'S
23 FORM INTERROGATORIES, SET ONE MARKED
24 EXHIBIT NO. 7)

25 I'll represent to you, sir, that these are

1 your responses to Form Interrogatories served in
2 this case.

3 A. Uh-huh.

4 Q. And if you look at the -- first, turn to the
5 second to the last page.

6 A. Okay. Page 16?

7 Q. That's correct.

8 You notice the verification at the top and
9 that's your signature, the third from the top,
10 correct?

11 A. Probably is.

12 Q. Do you recognize that as your signature?

13 A. Yeah.

14 Q. Okay, and did you understand that when you were
15 signing this verification you were stating under
16 penalty of perjury that all the information
17 contained in this was true and correct?

18 A. To the best of my recollection at the time,
19 that's correct.

20 Q. Okay.

21 Turning to Page 4 and this asks for your
22 job history and you start off in 1991 with the
23 marketing intern at Microsoft, correct? Starting
24 from the bottom and working all the way up until you
25 get to the bottom in the Response To Interrogatory,

1 of computers as does Modern Physics does.

2 Was it computational? Absolutely.

3 Q. And you got a B.S. in that, in Physics?]

4 A. Yeah.

5 Q. Okay.

6 A. What do you have a law degree in?

7 Q. Are you finished, sir?

8 A. I was just asking what do you have a law degree
9 in.

10 Q. Certainly not Computational Physics. They
11 didn't offer that at my school, either.

12 MR. LEDAHL: All right. I'm going to
13 ask that that be stricken.

14 Counsel is making now snide remarks that
15 are both unproductive and argumentative --

16 MR. ONGARO: I'll allow it to be
17 stricken.

18 MR. LEDAHL: -- and false because they
19 did offer it at the University of Pennsylvania,
20 contrary to what you just stated.

21 MR. ONGARO: No, they didn't.

22 Q. Okay, then. Let's go back to this. Let's go
23 back to this, sir.

24 A. You are engaged in absurd semantics.

25 Q. Why don't you show me on Exhibit No. 9 a

1 So, let me ask you this way: Did you ever
2 get a diploma on it which said that you had a
3 Bachelor's of Science in Computational Physics from
4 Penn?

5 A. I don't know what exactly -- the exact wording
6 on the diploma.

7 (UNIVERSITAS PENNSYLVANIENSIS

8 MARKED EXHIBIT NO. 10)

9 Q. Now, looking at the first two pages of
10 Exhibit 10, are those the only two diplomas you
11 received from the University of Pennsylvania?

12 A. You know, I didn't even look at these things
13 coming out. So, I guess these are the diplomas from
14 the University.

15 Q. Do you think you have additional diplomas from
16 the University of Pennsylvania?

17 A. No.

18 Q. Okay.

19 Are you aware of either of these diplomas
20 granting you a Bachelor of Science in Computational
21 Physics?

22 MR. LEDAHL: The documents speak for
23 themselves. It's absurd.

24 THE WITNESS: Well, actually, it's in
25 Latin.

1 MR. ONGARO:

2 Q. If you look at the last page....

3 A. It just says on the translation in brackets,
4 "name, to the degree of degree."

5 Q. If you look at the -- the diplomas themselves,
6 one says Bachelor of Science in Economics in
7 English. Is that correct?

8 A. Yes.

9 Q. And the other just says Bachelor's of Science
10 in Latin, correct?

11 A. I don't know what it says. I'm not good at
12 Latin.

13 Q. Fair enough.

14 Okay. Do you want a minute to look through
15 that book to see if there is any changes?

16 A. I'm just curious.

17 Q. Okay.

18 Now, when you met with Felipe, do you
19 recall him -- strike that. Do you recall describing
20 to him what you were interested in doing?

21 MR. LEDAHL: Objection. Vague and
22 ambiguous, lacks foundation.

23 MR. ONGARO:

24 Q. Well, in regard to just Zip2.

25 A. You know, my recollections with Felipe are

1 sorry. How do you pronounce his last name?

2 A. Proudian, Derrick Proudian.

3 Q. Did you ever tell Derrick Proudian that you
4 were a Stanford graduate student?

5 A. I don't recall whether I told him that or not.

6 Q. Okay, and you never attended a single class at
7 Stanford as a graduate student, is that correct?

8 A. That's correct.

9 Q. Did you ever pay any tuition fees at Stanford
10 for any graduate programs?

11 A. No, because I deferred starting.

12 It was about two days into the quarter that
13 I spoke with Bro Mex (phonetics). who was the
14 Chairman of the Science Department and deferred
15 starting.

16 Q. Did you ever send him a letter indicating that?

17 A. No.

18 Q. Did you ever receive a letter from him
19 representing that?

20 A. Not from Bro Mex (phonetics).

21 Q. From anybody at Stanford?

22 A. I don't know.

23 Q. Okay.

24 Do you have in your possession anywhere any
25 documents that shows that you were accepted at

--000--

REPORTER'S CERTIFICATE

I, EASTELLER BRUIHL, CSR NO. 3077, Certified
Shorthand Reporter, certify;

That the foregoing proceedings were taken
before me at the time and place therein set forth,
at which time the witness was put under oath by me;

That the testimony of said witness, the
questions propounded, and all objections and
statements made at the time of the examination were
recorded stenographically by me and were thereafter
transcribed;

That the foregoing is a true and correct
transcript of my shorthand notes so taken.

I further certify that I am not a relative or
employee of any attorney of the parties nor
financially interested in the action.

I declare under penalty of perjury under the
laws of California that the foregoing is true and
correct.

Dated this 22ND day of MAY 2009.

EASTELLER BRUIHL, CSR NO. 3077

1 REPORTER'S CERTIFICATION OF CERTIFIED COPY
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7 I, EASTELLER BRUIHL, CSR NO. 3077, a Certified
8 Shorthand Reporter in the State of California,
9 certify that the foregoing Pages 1 through 260,
10 constitute a true and correct copy of the original
11 deposition of ELON REEVE MUSK, taken on THURSDAY,
12 MAY 7, 2009.

13 I declare under penalty of perjury under the
14 laws of the State of California that the foregoing
15 is true and correct.
16

17 Dated this 22ND day of MAY, 2009.
18
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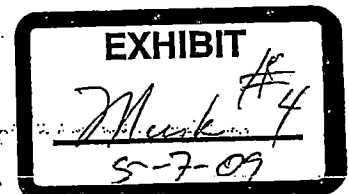
21 EASTELLER BRUIHL, CSR NO. 3077
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CAS 107CVOB3172
WITNESS: STEPHEN
SAPERSTEIN
DATE: NOV. 7 2008
OF SUBPOENA

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Executive Summary

There is currently no easy way for consumers to find a business that sells the specific product or service they need. The paper Yellow Pages is often the only resource available to the consumer and is limited by geographic area, depth of content and ease of use. Furthermore, businesses are forced into artificial categories and are without any means of interaction with the customer. The arrival of the Internet presents the means to take advantage of this opportunity.

Global Link has developed a product on the Internet duplicating real-world cities to create the next generation of local business advertising -- the future Yellow Pages. The system provides the user with a powerful search engine to find businesses on or off the Internet, that offer the user's desired products or services. They can then obtain detailed information about those businesses and communicate directly with them through an Internet-to-Fax gateway. At the user's request, detailed door-to-door directions are generated from the customer's home right to the business. Global Link's name for this system is the Virtual City Navigator.

The Virtual City Navigator is designed to maximize speed and ease of use. It allows you to ask real questions, such as "Find all places that serve espresso after 10 p.m. near Stanford," and receive a rapid and accurate response. Once you find a business that offers what you need, you can then request information such as menus, price lists, and order forms. Global Link has also developed a proprietary Internet-to-fax gateway that allows customers on the Internet to communicate directly with any business via toll-free fax.

Global Link has a strong focus on software development for the Navigator system. This will ensure that the Internet user continues to receive more value from using the Navigator than from any potential competing service. Global Link is working with Navigation Technologies (Navtech), in Silicon Valley, to continuously enhance the dynamic directions generator. In 1996, Global Link and Navtech will ramp-up the incorporation of Navtech's mapping data with the Internet's newest programming language, Java. This will allow for unprecedented flexibility in the creation and manipulation of detailed maps on a client computer. Other software products under development include client software that assists the user in their searches. All of these products will improve the flexibility and functionality of the client, and reduce the burden on the server. They are being designed in order to accommodate licensing the software to other companies.

A key part of the Virtual City Navigator is the interactive and personalized nature of the system. Upon registering as a user, the individual provides their address and other demographic information. The system then adapts itself to the individual, displaying advertisements and information most likely to be of interest to that user (for example, a resident of San Francisco, aged 25 to 30 and married, would receive advertisements from a local car dealership). These demographics also help the users in their search, allow directions to be generated, and show businesses the type and location of the people searching for them.

The features described above represent a significant competitive edge over other information services on or off the Internet. Nynex and Yellownet, the nearest competitors, are not much more than the paper Yellow Pages on a computer screen. The Virtual City Navigator, on the other hand, offers much greater value to the customer through interactivity, smart search capabilities, communications and directions features mentioned above. The value to businesses

will be a new cost-effective advertising medium, improved customer service and comprehensive consumer access statistics provided by Global Link.

Global Link is currently implementing the Virtual City Navigator Service in the Bay Area of California. A revenue model analogous to that of the paper yellow pages is being used, whereby businesses pay for enhanced listings and the service is provided free of charge to the customers. The required financing for effective implementation is \$300,000. This is expected to result in cumulative sales over seven months of \$1.25 Million dollars and a strong base of businesses on the system. Annual earnings less extraordinary expenses will be \$586,000 in the first year, with a real rate of growth of 15%. Using the Net Present Value of Earnings method of company valuation, the result is a value of \$2,750,000. Global Link intends to have 10% of businesses in the Bay Area using our service by the year 2000.

The implementation of the service in the Bay Area is intended to serve as a template for licensing the system to companies in other regions. In exchange for royalties, Global Link will grant exclusive marketing rights to companies on a geographical basis. Global Link's role will then be to manage the flow of information and perform research & development, with all other duties being assumed by the licensees. Global Link will maintain a strong focus on continued development of the Virtual City Navigator product and supporting software.

Industry Analysis

The Internet and the World-Wide-Web

The Internet is expanding exponentially. The number of new users in October of 1995 was more than double the number of new users in 1994. According to USA Today, over 30 million Americans now have direct access to the Internet and that figure is expected to double within 18 months. This high rate of expansion has encouraged the development of a vast stream of Internet applications for consumer and business use. Until recently, however, developers have geared these applications towards users already on the Internet. Unless one was interested in the Internet itself, these products did not have much meaning or value. Today, this is no longer the case. The trend is now shifting away from advanced scientific and technical applications towards products and services geared towards a far broader spectrum of society. The Internet is changing from being a hobby to becoming a practical tool.

The two most prominent examples of this on the Internet today are the mail-order and news publications businesses. Mail orders are now much easier to perform, with greater confidence to the purchaser. This is due to the capability within the Internet to offer demonstrations at the consumer's request, and supply reviews along with the product's information. News publications companies are also starting to realize the value of the Internet for consumers. Instead of having to go through an entire newspaper, an individual can use the Internet to search for articles on a desired subject. The individual also has access to news sources from all around the world, as opposed to being limited to his local newspaper's coverage. With advantages such as these, the Internet is becoming an increasingly popular tool for everyday practical use.

The Opportunity

Individuals and businesses currently use the print Yellow Pages (YP) to find the locations and telephone numbers of various businesses in a particular service sector in their city. However, the small geographic coverage and lack of depth in the information provided is causing a shift from print towards digital media through the internet. Global Link will differentiate itself from the current group of generic YP providers on the Internet by providing a natural language search engine, comprehensive information, intelligent maps, and electronic commerce capabilities designed to take full advantage of the new electronic medium. Client/server software developed by Global Link will further enhance flexibility and functionality for the user.

The Virtual City Navigator has a revenue model much like the Yellow Pages. Businesses pay to advertise on the Navigator and therefore differentiate themselves from their competitors. The advertising potential of our service is much greater than competing services due to its ability to customize advertisements based on the customer's home location, as well as by demographics. It also opens the door to co-op advertising on the internet. Co-op advertising is the joint advertising of a manufacturer and its outlets, commonly done in the print Yellow Pages. This is a very lucrative market that until now has ignored the Internet, largely because there was no channel for it. With the advent of

the Virtual City Navigator there is a way for IBM, for example, to advertise their outlets to users in their respective areas. The interactive nature of the VCN makes this possible by changing the advertisements based on the user's area.

Competition

Existing attempts at an electronic YP fail to properly utilize the new electronic medium, offering little value over the traditional print version. As a result, there is little incentive for a the consumer to use their services over the YP book on their desk.

Competitors

Nynex (<http://www.niyp.com>) is the largest competitor. Their service is still very simple, however, and offers no more than a CD-ROM YP. Furthermore, the search engine uses only traditional yellow pages categories, offers no descriptive information apart from the address & telephone number, and lacks maps, directions, full-text searching, Internet-to-fax capabilities or real interactivity. None of the other paper YP providers in the USA, other than Nynex, even offer an Internet-based YP. AT&T, MCI and Bell Atlantic have recently announced plans to develop something like the Nynex system, but have yet to even enter the beta development stage. Once their services do enter the trial stages, several months from now, Global Link remains confident of exceeding the glacial pace of innovation of the competition.

The Internet presents an interesting economic model in the sense that there is little cost or inconvenience, from a user's standpoint, in transferring from one information provider to another. The user simply types in a different Internet address. This implies that the information provider with the superior service will achieve a very large share of the market, irrespective of market capitalization or financial strength. Therefore, an environment such as the Internet is ideally suited for a rapidly moving, highly innovative firm such as Global Link. Having examined all other known competitors, we can find none that match, or even approach, Global Link's Navigator service in the above qualities.

Building Barriers to Entry

In the print medium, the Yellow Pages has achieved a dominant mind-share for consumer business searches. At this point in time, however, the print YP providers do not appreciate the value of the Internet, their management still being focused on print media. To successfully take advantage of this opportunity, Global Link will use an intensive marketing campaign to capture a dominant mind-share, in its test market of the Bay Area initially, and then across North America. Global Link will be tapping into a market that no one has seriously attempted to reach yet.

The two main barriers to entry are technology and consumer perception. The Navigator has a technological advantage over other YP providers on the Internet. If one were to examine what happened between Netscape and Mosaic then this would indicate that the Virtual City Navigator should be able to achieve a large market share. Mosaic was the initial web browser available and had nearly all the market share. However, with the advent of Netscape, Mosaic's share was dramatically cut, leaving Netscape as the

dominant browser. This shift from Mosaic to Netscape was due to a slight technological advantage the latter had over the former. Global Link's technological edge would therefore present a major barrier to any other YP provider on the Internet.

Global Link will continue to develop proprietary software and systems for both internal purposes and to improve the ability to market and license of the Navigator system.

Global Link has three software projects in its plans and underway which will further increase the convenience to the user and strengthen the barriers to entry. Client/server software will improve the functionality and flexibility to the user, and reduce the processing requirements on the server. These software products, described later, are an essential part of Global Link's long term competitive strategy.

Global Link provides low cost web pages for a relatively small charge. The barrier to competitors is that the information that we obtain from the business, and charge them for, will have to be obtained at the competitors expense. They would have to provide incentive enough to drop our service and replace it with theirs. Such an incentive will be very costly, given our dominant mid-share and innovative service. Therefore, by simply being the first mover in the industry, a significant entry barrier is created.

The system now links to over 6,000 web pages in the Bay Area and is expanding on a daily basis. This is the approximate total number of business web pages in the Bay Area. The objective of this exercise is to be the premier source of business web pages in the Bay Area. This serves as a tool to attract internet users to our site, while providing an additional barrier to entry.

The Navigator is the first to offer a natural-language search engine, comprehensive local business data, interactivity, door-to-door directions as well as the means to communicate with a business through the Internet-to-Fax gateway. As a result, the site is likely to be recognized as a top site by Internet-oriented publications, helping to build mind-share and a strong first-mover presence.

Description of Services to the Internet User

The Navigator is the first and only interactive, geographically-based search tool on the Internet. The user is asked to register and fill out a short form, including the demographics of the user. Although the Navigator requires personal details of the user for registration, the Navigator will not make this information available to businesses without the user's permission. Once registered, a user enters the system under his or her own name. The system will then be able to keep a record of the user's activities, and use this record to help him or her make more efficient searches. For example, a user could log in once and make a search for a required product within 5 miles of a hotel that he regularly uses on business trips. On a subsequent log-in, the Navigator remembers that location and includes it as an option to allow the user to bypass a few steps and make a search in the same area.

A user of the Navigator is able to search for a list of businesses in a desired area using natural language. Once the Navigator search engine has generated a list, the user is then able to access basic information for any business on that list. For registered businesses, the Navigator will supply the user with the quickest route to the business from his home

address, as well as direct access to that business' home page. Transactions and communications between the user and the business can be conducted over the Internet through the use of electronic funds transfers, electronic mail and fax.

Global Link has developed and is currently testing its electronic commerce features into the system, which will enable users to:

- Utilize their credit cards to order products and services across the internet in a safe and effective manner.
- Trade or exchange items with other users of the Navigator.
- Advertise and sell their own goods through our exclusive classified service

Description of Services to Businesses

There will be two main services offered to businesses by Global Link through the Internet. The core service will be business advertising. Global Link will offer this in a number of forms:

- The first level is the basic name, address and category of the business. (This is free for all businesses)
- The second level is a home page on the Navigator system for advertising the business and to supply more detailed information about the business. The name of the business will also appear in bold typeface when a user conducts a search in that business' category. (\$200 per annum)
- The third level of service will be the display of a business' logo when a customer requests a list of businesses in its category. The business' page is also more elaborate and customized. (\$1,000 per annum)
- The highest level of advertising will be the display of a business' logo on the main search pages, as well as the Navigator home page. (\$2,500 and up)

In addition to providing an inexpensive web page, the Navigator differentiates itself by offering detailed door-to-door directions and an Internet-to-Fax gateway for all customers. Both services are unavailable on any other commercial service.

Electronic Data Interchange will become a key feature of the service, as well as improved communications tools between the user and the business. Due to Global Link's combined database of customers and businesses it provides a powerful vehicle for direct marketing through the Navigator. One feature currently included is the ability for a business to notify interested customers of its sales and special promotions on the Internet through our system.

The second service will grow as use of the Navigator expands. As mentioned earlier, the Navigator will ask any individual that wishes to use its enhanced features to register first. The registration form will comprise of a number of questions that will describe the demographics of the individual. We will then be able to record each time a particular user accesses a business' information, and be able to supply that business with detailed statistical information about the consumers.

The two core services, coupled with future developments, forms a high value-added package to the business and the user. It is a service over and above what is being supplied currently or in the near future. The Navigator intends to become the premier business information source on the Internet in the Bay Area and then across North America.

Software Development

The development of innovative and practical applications for the Navigator is a key factor to its long term success. Constant development of tools for the client's computer will keep our user-base growing and provide a disincentive for existing users to seek out competing services. Development of innovative services for our business customers will also make it harder for other services to compete. All of these applications also add value to the Navigator system as a licensable product. Software development is therefore a key part of Global Link's long term strategy.

Client-side Mapping software

Global Link is working with Navigation Technologies to develop software that will improve the mapping functionality and ease of use for the user. The software is being designed in Java supplemented by C++ DLLs, and will allow the client to create maps based on information sent by the server. This will allow for unprecedented flexibility in the creation and manipulation of detailed maps for an Internet user. It also drastically reduces the requirements of the server itself, by sharing the required processing with the client. Global Link intends to significantly accelerate development on this software in January 1996, with a completed product by April 1996, by which time Java-enabled browsers will be the standard.

Server-Side Search Engine Enhancement

Current search engines available are not made specifically for an application such as the Navigator. As a result, the functionality to the user and reliability of the search results are not always satisfactory. One of Global Link's strategic products includes such a search engine. A search engine designed specifically for searches such as products and services in an area will add significant value to the Navigator product, both from a user's point of view and a licensee's point of view. Development of this engine has already begun and a Beta version will be implemented in February of 1996.

Client-side Intelligent Search Tools

In order to provide the user with true natural language searches, a significant amount of assistance is required on the client side. It is impossible for a server-based search engine to effectively customize searches based on each user's specific preferences. A client-side application would not have this problem. Instead, an effective software product sitting on the client computer will be able to work with the user to clarify the search request to the server. The product would be able to customize itself quite easily to its users preferences and be able to make future searches simpler and faster. For example, the client computer will eventually be able to start parsing input while it is being entered. This will give the client the ability to clarify search requests before they are sent to the server.

Another application that Global Link intends to offer is client-side animation software, making the Navigator more intuitive and fun to use. Development of these products will

begin in February, 1996. The client-side search assistant will be completed by June, 1996.

Licensing of the Navigator System

Global Link has begun the implementation of the Navigator service in the Bay Area of California. The business model created in this area will be used as a template for the licensing of the system to other companies in North America. In exchange for royalties, Global Link will grant exclusive marketing rights to companies on a geographical basis. Global Link's role will then be to manage the flow of information and perform research & development, with all other duties being assumed by the licensees.

All business data will reside at Global Link headquarters in Palo Alto. The information flow model envisioned is similar to that of the flow of packages at Federal Express. The success of the Federal Express system was based on the premise that it is cheaper, faster and more reliable to process and route packages at one large central location, than at several smaller, separate locations around the country. This applies even more so to the Internet, where physical proximity holds little advantage -- a server on the other side of the world can sometimes respond faster than a server that is next door.

By keeping all data at a central location, one can take advantage of economies of scale. The greatest economy of scale would be that of knowledge and training. It would be very costly and time-consuming to set up the Navigator system and train the people responsible for maintaining the software and hardware at a large number of locations around the world. Potentially even more difficult, considering the rapid pace of innovation needed to remain competitive on the Internet, would be ensuring that all parts of the system are upgraded at the same time. For example, Netscape upgrades their software once every ten to fifteen days. Global Link expects to upgrade its software at least once per month for the first two years. This would be an impossible task in a decentralized operation. Another benefit of a centralized environment is that one can ensure that any problems are dealt with by the most knowledgeable and experienced personnel in the company.

Virtual City Navigator (VCN) would follow a branding model similar to that of VISA or Mastercard. For example, in San Francisco the service might be known as the SF Chronicle Virtual City Navigator, while in LA it would be the LA Times Virtual City Navigator. This decentralizes the marketing effort and ensures that the highest technology level is maintained.

Responsibilities of Global Link

Global Link will be the licensor of the Virtual City Navigator system and will be responsible for the following:

- Maintenance of the business information database software.
- Maintenance of server hardware and network connectivity.
- Ongoing research and development.
- Technical support.
- Providing businesses with a monthly demographic breakdown of consumers that accessed their information on the Navigator system.
- Promotion of the Navigator service on a statewide and national scale.

Responsibilities of the Licensees

The licensees would be responsible for marketing and administrative support of the Virtual City Navigator system in their respective regions. This includes:

- Promotion and sales of business accounts on the Navigator.
- Acquisition and entry of business information into the Navigator database via the Internet.
- Maintenance and updating of business information via the Internet.
- All billing and collection of accounts payable in their region.
- Providing non-technical and limited technical customer support.

Global Link will license the marketing rights to the Virtual City Navigator system to companies on a regional basis. Ideal licensees will have a strong marketing network and brand name recognition over their particular geographical region.

Marketing Strategy and Implementation Schedule

Bay Area

Businesses are beginning to realize the value of the Internet as a medium for advertising products and services. The problem they face is not knowing where to turn for the development of a web site. They generally have two requirements: the web page must have pertinent information that a consumer will find useful, and consumers must actually access the site.

Businesses must either outsource the task to their traditional computer consultants, if they have one, or they must produce the site themselves. The alternative is to find some small company that produces simple web sites and contract them to do it. All choices are either very costly or difficult to go through and can often only be justified by larger companies. These options also do not guarantee that they will fulfill the two main requirements for a business, outlined above. Global Link intends to take advantage of this opportunity. No company currently holds the position as the major low cost web site producer in the Bay Area. Through its marketing efforts, Global Link intends to take this position. Based on the following marketing strategy, sales for a seven month period from implementation are expected to be \$1.25 million with a strong base of businesses registered on our system (exhibit 1 & 2).

Global Link intends to use Poppe Tyson as its advertising agency. It is considered the leader in Internet advertising, with clients including Netscape and the White House. Their strong ability to combine new media with the old allowed Marketing Computer Magazine to name them the advertising agency of the year for 1995.

Period 1, First two Months

Global Link will use a penetration marketing strategy for the Bay Area. The Basic listing, at least, is not designed to be a major decision for the business. The target market will be the smaller businesses in the Bay Area for the Basic package, and the bigger businesses for the Enhanced package. Most of these businesses have not yet set up a web page themselves, since they are unable to afford traditional consultants or lack the knowledge to set up a web site themselves. Global Link will provide a service that our market research indicates would be very competitive: \$200 for a full year Basic listing; and \$1000 for a full year enhanced listing (for a breakdown of each package, please refer to exhibit 8). Most services charge \$100 to \$500 set-up alone and are able to offer very few of the Navigator's features.

This campaign will focus on radio, newspaper and outdoor advertising to begin the sales process. The first two months will be used to introduce Global Link to the market place, and establish a presence in the minds of both internet users and businesses. Global Link will also work with Internet Service Providers in the Bay Area to place a link to the Navigator from their home pages. This will create a solid base of users on the Navigator system. The results of the first period are expected to be just under \$70,000 in revenue, with 300 businesses subscribing to the Navigator by the end of month two.

Period 2, Third and Fourth Months

Global Link will use a shotgun marketing strategy during this period, to capture the mind-share of businesses and ensure that a critical mass register with the Navigator. During this period, Global Link will send businesses two waves of flyer drops, successive newspaper advertisements, press releases, strong Radio support, and outdoor advertising. The purpose of this effort will be to place Global Link in the minds of business owners as not only a major low-cost web presence provider in the Bay Area, but also as the premier local business information source on the internet. During this campaign, a sales force of 11 to 15 members will be approaching businesses to register with the Navigator. The result of this period will be over 1300 newly registered businesses and approximately \$300,000 in revenues. With a stronger focus on Enhanced Packages, the number of businesses registered is expected to drop, while revenues will remain at about the same level.

Period 3, Month Five to Seven, and on

By Month Five, the Navigator will have achieved the critical mass required for our service. Global Link expects to report positive net income in the sixth month and growth in revenues of 10% per month. Advertising support for the sales people will be reduced to regular flyer drops and occasional newspaper and radio advertisements. The number of sales people in the Bay Area alone will serve to maintain a strong presence for Global Link. Although advertising efforts will be reduced during this period, the increased number of Sales people and the momentum generated during period 2 is projected to result in significant revenues of during this period. Growth in sales will continue at 10% per month until Global Link achieves a market penetration of 10% of businesses in the Bay Area with either a Basic or Enhanced presence on the Navigator.

Financial Analysis

Capitalization

Global Link requires \$300,000 to continue development of the Navigator system and market the service effectively to the Bay Area. The financial projections are fully described in exhibits 1 to 7. The Pro Forma Income Statement, Balance Sheet, and Cash Flow Statement for the period for the seven month plan are in exhibit 1. Based on this analysis, financing of \$100,000 is required in the first month, and \$200,000 in month two. This will be supported by sales revenues over the seven month period. The financing will be used to purchase equipment, hire software programmers and other employees, and implement a concentrated advertising campaign in the Bay Area. Global Link expects to generate over \$1.25 million in sales during the period and achieve a positive cash flow in the sixth month of operations.

The \$300,000 investment will amount to unsecured convertible notes carrying an interest of 7%, and warrants to purchase 300,000 shares of common stock (there are currently 2,000,000 shares outstanding).

The return on investment while appearing high, is not unusual for an Internet-based company. By the end of the seventh month, the annual ROI will be 82%. This figure is also a conservative estimate since recurring revenues are not included in the valuation.

Valuation of Company

Global Link expects to generate positive cash flow from San Francisco Bay Area customers in the sixth month of operations. By the end of the seven month period Global Link will grow at a real rate of growth of 15% to 36 employees and a valuation of \$2.75 million, based on the Net Present Value of Expected Earnings method (see exhibits 1, 5 & 7). This figure is attained by being the first service of our kind in the market, and effectively using a powerful marketing campaign to gain the recognition and customer base to become the premier on-line local business information source in the Bay Area. This creates a very lucrative recurring revenue model. Using the success of this exercise, Global Link will seek further financing to roll out the service country-wide. Although marketing will be done by a regional licensee, Global Link plans to provide the service itself (without marketing) across North America to build further barriers to entry by gaining a user base and collecting information on other areas.

Management

Greg Kouri -- Corporate Relationships

Greg is an experienced management executive with strong operations and negotiation skills. As a Real Estate Developer in Canada and the USA, Greg was responsible for revenue attainment, operations, administration, financing, and forecasting for 6,000 apartment units and 5,000,000 sq. ft. of commercial space. His cash management skills and marketing know-how reduced expenses by over 16% and increased occupancy rates by 22%. His strong negotiation skills resulted in the successful refinancing of numerous performing and non-performing loan facilities. Previous to this Greg was the President of a manufacturing operation in Toronto, Canada. Greg was responsible for successfully moving this operation into Western Europe, Asia and Australia. Greg brings his experience in operations, negotiations and new business development to help develop the relationships crucial to Global Link's expansion across North America. Greg is currently residing in Toronto, Canada, and will relocate to the Bay Area when necessary.

Elon Musk -- Technology

At the head of the Global Link research group is Elon Musk. He has completed a degree in finance and entrepreneurship from the Wharton School, and a B.S. in Computational Physics. Elon has previously worked for Microsoft's Advanced Products Group, and Peter Nicholson, who is currently the chief economic advisor to the Canadian Prime Minister. His first computer program was published at age twelve, and his first company founded at age eighteen. Elon is responsible for the strategic direction of the technology behind the Virtual City Navigator.

Kimbal Musk -- Operations

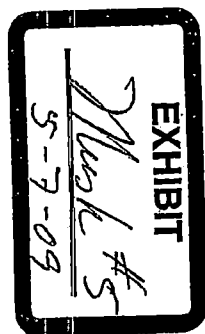
Kimbal Musk has a Business degree from Queen's University, Canada. Through his company, NetStream, Kimbal has done consulting work for Rogers' CableSystems, DuPont Canada, and Queen's University. All projects involved integrating technical and business issues to create efficient and effective solutions. His last contract was with Kasten Chase Applied Research, a communications hardware developer. There Kimbal recruited and trained a strong team of telemarketers, designed a database management system, brought in a manager, and directed the team through an intense marketing campaign to expose the company's product to Value Added Resellers around North America and Europe. The campaign was very successful and the team created formed a permanent part of the organizational structure. Prior to this, Kimbal ran a highly successful service franchise for two years, hiring and managing 20 people while handling several contracts at once. Kimbal will be responsible for the daily operations of the company.

Craig Mohr -- Sales, Bay Area



The Virtual City Navigator

The Yellow Pages of the future...



Interactive Local Business Directory

- Natural Language Search Engine incorporated into a powerful Geographical Information System (GIS).
 - » Searches by distance from any landmark or street address
 - » Detailed door-to-door directions
 - » Dynamic map generation high-lighting the route to final destination
- Internet-to-Fax Gateway
- User recognition and tracking

Focused Internet Advertising vs. Generic Presence

- Only method to target local area customers
- Business search by products, services, category and business name
- STT secured electronic commerce facility (supported by VISA)
- Internet-specific features:
 - » Direct Link to existing web page and e-mail
 - » Direct e-mail marketing
 - » Owner-changeable web pages
 - » Internet presence for the "unsophisticated" business owner

A Simple, Exciting Business Search System

- Quick, easy and exciting tool
- Directions, map and fax capability
- Eliminates the frustration of the Yellow Pages:
 - » Location-based, plain-English searching
 - “Italian Restaurant within 2 miles of ...”
 - » Search by brand names, products, services, business name, and category
 - » The user has access to a business directory for cities throughout North America

The System Tools

- Proprietary Software

- » Web server and map-generation software
- » Geographic information system
- » User-tracking system
- » Communication Software

- Information Sources

- » Navtech - Mapping company
- » Database America - Business Information Collector

Target Market - Internet Users

- General retail consumers
- Small-Office/Home-Office (SOHO)
 - » Low volume users who will specifically go on to the Net for a purpose
- Corporate consumers
 - » Dedicated connection users who use the internet for convenience

Target Market - Businesses

- Businesses

- » who want to target their local area customers
- » who rely on advertising
- » seeking an effective internet presence
- » who want to increase traffic to their existing web site
- » who don't want to miss the boat (Competitive reaction)

- Breakdown

- » Dealers/Franchises
- » Branches
- » Associations
- » Individual businesses

Potential Marketing Strategies

-- Not Mutually exclusive --

- Top ten metropolitan areas, market-by-market
 - » Market through Media-based companies that have a local presence
 - » System operated from Palo Alto
 - Technology updated continuously
 - Information collected by Global Link
- Private labelling to large commercial companies with local Presence.
 - » Nissan, BMW and their dealers
- Licensing of mapping software to Navtech, DBA, America-On-line, etc.

Competition

- Nynex:
 - » A yellow pages CD-ROM on the Internet - With DBA database.
 - » An attractive interface but without any personalization, natural language searching, radius searching, interactivity, fax communications, e-mailor mapping software.
- YellowNet:
 - » Same as above with ABI information
- Number of small unfundeds
- America On-Line is expected to bring out a service similar to Nynex
 - » Expected release by June 1996.

Cost of Entry

- Software
 - » Mapping Server
 - » Mapping software
 - » Enhancement to search engine
 - » User tracking
- Data enhancement
 - » Geocoding
 - » Web site links
 - » Additional information about the business
- Mapping Relationship
- Corporate Relationships

Current Status

- Currently implemented in 415, 408, 510 area codes as www.totalinfo.com
- Small sales effort to reduce burn rate
- Usage
 - » 600 registered users on the system
 - » +/- 1000 hits per day (10% registration rate)
- Software
 - » Mapping
 - Mapping server in alpha test
 - Map software being tweaked for appearance of maps
 - Client-Server JAVA applet under development
 - » Search engine fully developed
 - » One-way communications software complete
 - » User-tracking system in place

Advertising to Internet User

- Banners on high-traffic sites
 - » e.g. Netscape
- Press Releases
- Internet "What's Cool" lists

Advertising to the Business

- Direct mail
- Magazine advertisements
- Telemarketing
- Press Releases

Financial Analysis

- \$600,000 required to
 - » Set up a management team
 - » Expand system across North America
 - » Achieve an Internet presence
 - » Market to businesses in Bay Area
 - » Establish strategic marketing partners
 - » Continue software development
- Supported by sales revenues

Biographies of Founders

Elon Musk -- Technology

At the head of the Global Link research group is Elon Musk. He has completed a degree in finance and entrepreneurship from the Wharton School, and a B.S. in Computational Physics. Elon has previously worked for Microsoft's Advanced Products Group, and Peter Nicholson, who is currently the chief economic advisor to the Canadian Prime Minister. His first computer program was published at age twelve, and his first company founded at age eighteen. Elon is responsible for the strategic direction of the technology behind the Virtual City Navigator.

Kimbal Musk -- Operations

Kimbal Musk has a Business degree from Queen's University, Canada. Through his company, NetStream, Kimbal has done consulting work for Rogers' CableSystems, DuPont Canada, and Queen's University. All projects involved integrating technical and business issues to create efficient and effective solutions. His last contract was with Kasten Chase Applied Research, a communications hardware developer. There Kimbal recruited and trained a strong team of telemarketers, designed a database management system, brought in a manager, and directed the team through an intense marketing campaign to expose the company's product to Value Added Resellers around North America and Europe. The campaign was very successful and the team created formed a permanent part of the organizational structure. Prior to this, Kimbal ran a highly successful service franchise for two years, hiring and managing 20 people while handling several contracts at once. Kimbal will be responsible for the daily operations of the company.

1 Terry Gross (103878)
Adam C. Belsky (147800)
2 Monique Alonso (127078)
GROSS BELSKY ALONSO LLP
3 180 Montgomery Street, Suite 2200
San Francisco, California 94104
4 Telephone: (415) 544-0200
Facsimile: (415) 544-0201

5 Attorneys for Defendant
6 ELON MUSK

7
8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SANTA CLARA

11 JOHN O'REILLY,

12 Plaintiff,

13 v.

14 ELON MUSK; DOES CONSPIRATORS
1-10, Inclusive; and DOES 11 through 25,
15 Inclusive,

16 Defendants.
17

) Case No. 1-07-CV-083172

) DEFENDANT'S RESPONSES TO
) PLAINTIFF'S FORM
) INTERROGATORIES, SET ONE

18 PROPOUNDING PARTY: Plaintiff JOHN O'REILLY

19 RESPONDING PARTY: Defendant ELON MUSK

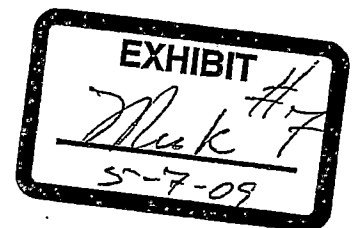
20 SET NUMBER: ONE

21 GENERAL OBJECTIONS

22 1. Plaintiff objects to each Interrogatory to the extent that it seeks information protected
23 from disclosure by the attorney-client privilege, the work-product doctrine, or any other claim of
24 privilege.

25 2. Plaintiff objects to each Interrogatory to the extent that it seeks information protected
26 from disclosure by plaintiff's rights to privacy under the California Constitution, the United States
27 Constitution, and other laws.

28 3. Plaintiff objects to each Interrogatory to the extent that it seeks information that is



1 neither relevant nor reasonably calculated to lead to the discovery of admissible evidence relevant to
2 the subject matter of this action.

3 4. Plaintiff objects to each Interrogatory to the extent that it is overbroad, unduly
4 burdensome, compound, complex, vague, or ambiguous and/or seek information equally available to
5 the asking party.

6 5. Defendant objects to each Interrogatory containing the term "INCIDENT" on the
7 grounds that it is vague and ambiguous, compound, overbroad, and unintelligible when applied to the
8 subjects at issue in this matter.

9 6. These responses and objections are based only on the information obtained to date.
10 Because discovery and trial preparation are in an early stage and are continuing and because plaintiff
11 has not completed his investigation of this matter, plaintiff expressly reserves the right to present at
12 any hearing or trial additional information obtained after the date of these responses.

13 Subject to and without waiving each of his general objections, plaintiff responds as follows:

14 **FORM INTERROGATORY NO. 1.1:**

15 State the name, ADDRESS, telephone number, and relationship to you of each PERSON who
16 prepared or assisted in the preparation of the responses to these interrogatories. (Do not identify
17 simply who typed or reproduced the responses.)

18 **RESPONSE TO FORM INTERROGATORY NO. 1.1:**

19 Elon Reeve Musk.

20 **FORM INTERROGATORY NO. 2.1:**

21 State:

- 22 (a) your name;
23 (b) every name you have used in the past; and
24 (c) the dates you used each name.

25 **RESPONSE TO FORM INTERROGATORY NO. 2.1:**

- 26 (a) Elon Reeve Musk
27 (b) Not applicable
28 (c) Not applicable

1 **FORM INTERROGATORY NO. 2.2:**

2 State the date and place of your birth.

3 **RESPONSE TO FORM INTERROGATORY NO. 2.2:**

4 June 28, 1971; Pretoria, South Africa.

5 **FORM INTERROGATORY NO. 2.3:**

6 At the time of the INCIDENT, did you have a driver's license? If so, state:

7 (a) the state or other issuing entity:

8 (b) the license number and type:

9 (c) the date of issuance; and

10 (d) all restrictions.

11 **RESPONSE TO FORM INTERROGATORY NO. 2.3:**

12 Defendant objects to this interrogatory on the ground that it seeks information which is neither
13 relevant nor reasonably calculated to lead to the discovery of admissible evidence relevant to the
14 subject matter of this action.

15 **FORM INTERROGATORY NO. 2.4:**

16 At the time of the INCIDENT, did you have any other permit or license for the operation of a
17 motor vehicle? If so, state:

18 (a) the state or other issuing entity:

19 (b) the license number and type:

20 (c) the date of issuance; and

21 (d) all restrictions.

22 **RESPONSE TO FORM INTERROGATORY NO. 2.4:**

23 Defendant objects to this interrogatory on the ground that it seeks information which is neither
24 relevant nor reasonably calculated to lead to the discovery of admissible evidence relevant to the
25 subject matter of this action.

26 **FORM INTERROGATORY NO. 2.5:**

27 State:

28 (a) your present residence ADDRESS;

- 1 (b) your residence ADDRESSES for the past five years; and
2 (c) the dates you lived at each ADDRESS.

3 **RESPONSE TO FORM INTERROGATORY NO. 2.5:**

- 4 (a) 1105 Bel Air Place, Los Angeles, California 90077.
5 (b) Same.
6 (c) 2002 to present.

7 **FORM INTERROGATORY NO. 2.6:**

8 State:

- 9 (a) the name, ADDRESS, and telephone number of your present employer or place of
10 self-employment; and
11 (b) the name, ADDRESS, dates of employment, job title, and nature of work for each
12 employer or self-employment you have had from five years before the INCIDENT until today.

13 **RESPONSE TO FORM INTERROGATORY NO. 2.6:**

- 14 (a) SpaceX, 1 Rocket Road, Hawthorne, California 90250.
15 (b) SpaceX, 1 Rocket Road, Hawthorne, California 90250, May 2002 to present,
16 CEO/CTO; PayPal, 2211 North First Street, San Jose, California 95131, November
17 2000 to October 2002, director, February 1999 to October 2000, Chairman/CEO; Zip2,
18 no present address, mid 1998 to February 1999, EVP/CTO, mid 1996 to mid 1998,
19 Chairman/CTO, approximately August or September 1995 to mid 1996,
20 Chairman/CEO/CTO; Pinnacle Research, Los Gatos, California, Summer 1993 and
21 1994, engineering intern; Bank of Nova Scotia, Scotiabank, Scotia Plaza, 44 King
22 Street West, Toronto, Ontario, Canada M5H 1H1, Summer 1992, analyst intern;
23 Microsoft, One Microsoft Way, Redmond Washington 98052, Summer 1991,
24 marketing intern.

25 **FORM INTERROGATORY NO. 2.7:**

26 State:

- 27 (a) the name and ADDRESS of each school or other academic or vocational institution you
28 have attended, beginning with high school;

- (b) the dates you attended;
- (c) the highest grade level you have completed; and
- (d) the degrees you received.

RESPONSE TO FORM INTERROGATORY NO. 2.7:

Pretoria Boys High School, Roper Street Brooklyn, PO Box 11790, Hatfield 0028, South Africa, graduated Grade 12 in 1989; Queen's University, 99 University Avenue, Kingston, Ontario, Canada K7L 3N6, attended 1990 - 1992; University of Pennsylvania (Wharton), 3451 Walnut Street, Philadelphia PA 19104; dates attended 1992 - 1995, BS degree in Finance and Physics;

FORM INTERROGATORY NO. 2.8:

Have you ever been convicted of a felony? If so, for each conviction state:

- (a) the city and state where you were convicted;
- (b) the date of conviction;
- (c) the offense; and
- (d) the court and case number.

RESPONSE TO FORM INTERROGATORY NO. 2.8:

No.

FORM INTERROGATORY NO. 2.9:

Can you speak English with ease? If not, what language and dialect do you normally use?

RESPONSE TO FORM INTERROGATORY NO. 2.9:

Yes.

FORM INTERROGATORY NO. 2.10:

Can you read and write English with ease? If not, what language and dialect do you normally use?

RESPONSE TO FORM INTERROGATORY NO. 2.10:

Yes.

FORM INTERROGATORY NO. 2.11:

At the time of the INCIDENT were you acting as an agent or employee for any PERSON? If so, state:

- 1 (a) the name, ADDRESS, and telephone number of that PERSON; and
2 (b) a description of your duties.

3 **RESPONSE TO FORM INTERROGATORY NO. 2.11:**

4 No.

5 **FORM INTERROGATORY NO. 2.12:**

6 At the time of the INCIDENT did you or any other person have any physical, emotional, or
7 mental disability or condition that may have contributed to the occurrence of the INCIDENT? If so,
8 for each person state:

- 9 (a) the name, ADDRESS, and telephone number;
10 (b) the nature of the disability or condition; and
11 (c) the manner in which the disability or condition contributed to the occurrence of the
12 INCIDENT.

13 **RESPONSE TO FORM INTERROGATORY NO. 2.12:**

14 Defendant did not. Defendant has no information concerning plaintiff's physical, emotional,
15 or mental condition during the relevant time period alleged in his complaint.

16 **FORM INTERROGATORY NO. 2.13:**

17 Within 24 hours before the INCIDENT did you or any person involved in the INCIDENT use
18 or take any of the following substances: alcoholic beverage, marijuana, or other drug or medication
19 of any kind (prescription or not)? If so, for each person state:

- 20 (a) the name, ADDRESS, and telephone number;
21 (b) the nature or description of each substance;
22 (c) the quantity of each substance used or taken;
23 (d) the date and time of the day when each substance was used or taken;
24 (e) the ADDRESS where each substance was used or taken;
25 (f) the name, ADDRESS, and telephone number of each person who was present when
26 each substance was used or taken; and
27 (g) the name, ADDRESS, and telephone number of any HEALTH CARE PROVIDER
28 who prescribed or furnished the substance and the condition for which it was

1 prescribed or furnished.

2 **RESPONSE TO FORM INTERROGATORY NO. 2.13:**

3 Defendant objects to this interrogatory on the ground that it seeks information which is neither
4 relevant nor reasonably calculated to lead to the discovery of admissible evidence relevant to the
5 subject matter of this action.

6 **FORM INTERROGATORY NO. 4.1:**

7 At the time of the INCIDENT, was there in effect any policy of insurance through which you
8 were or might be insured in any manner (for example, primary, or pro-rata, or excess liability coverage
9 or medical expense coverage) for the damages, claims, or actions that have arisen out of the
10 INCIDENT? If so, for each policy state:

- 11 (a) the kind of coverage;
- 12 (b) the name and ADDRESS of the insurance company;
- 13 (c) the name, ADDRESS, and telephone number of each named insured;
- 14 (d) the policy number;
- 15 (e) the limits of coverage for each type of coverage contained in the policy;
- 16 (f) whether any reservation of rights or controversy or coverage dispute exists between you
17 and the insurance company; and
- 18 (g) the name, ADDRESS, and telephone number of the custodian of the policy.

19 **RESPONSE TO FORM INTERROGATORY NO. 4.1:**

20 Defendant is investigating whether any insurance policy provides him with coverage
21 concerning plaintiff's claims. To date, defendant has been unable to identify any such policy.

22 **FORM INTERROGATORY NO. 4.2:**

23 Are you self-insured under any statute for the damages, claims, or actions that have arisen out
24 of the INCIDENT? If so, specify the statute.

25 **RESPONSE TO FORM INTERROGATORY NO. 4.2:**

26 No.

27 **FORM INTERROGATORY NO. 12.1:**

28 State the name, ADDRESS, and telephone number of each individual: 1..

1 (a) who witnessed the INCIDENT or the events occurring immediately before or after the
2 INCIDENT;

3 (b) who made any statement at the scene of the INCIDENT;

4 (c) who heard any statements made about the INCIDENT by any individual at the scene;
5 and

6 (d) who YOU OR ANYONE ACTING ON YOUR BEHALF claim has knowledge of the
7 INCIDENT (except witnesses covered by Code of Civil Procedure section 2034).

8 **RESPONSE TO FORM INTERROGATORY NO. 12.1:**

9 Defendant objects to this interrogatory on the ground that it is vague and ambiguous as to the
10 defined term "INCIDENT." Subject to and without waiving this objection or the general objections
11 above, defendant responds that he has no personal knowledge or recollection of, nor reasonable means
12 of obtaining, this information.

13 **FORM INTERROGATORY NO. 12.2:**

14 Have YOU OR ANYONE ACTING ON YOUR BEHALF interviewed any individual
15 concerning the INCIDENT? If so, for each individual state:

16 (a) the name, ADDRESS, and telephone number of the individual interviewed;

17 (b) the date of the interview; and

18 (c) the name, ADDRESS, and telephone number of PERSON who conducted the interview.

19 **RESPONSE TO FORM INTERROGATORY NO. 12.2:**

20 Defendant objects to this interrogatory on the ground that it is vague and ambiguous as to the
21 defined term "INCIDENT." Subject to and without waiving this objection or the general objections
22 above, defendant responds: No.

23 **FORM INTERROGATORY NO. 12.3:**

24 Have YOU OR ANYONE ACTING ON YOUR BEHALF obtained a written or recorded
25 statement from any individual concerning the INCIDENT? If so, for each statement state:

26 (a) the name, ADDRESS, and telephone number of the individual from whom the
27 statement was obtained;

28 (b) the name, ADDRESS, and telephone number of the individual who obtained the

1 statement;

2 (c) the date the statement was obtained; and

3 (d) the name, ADDRESS, and telephone number of each PERSON who has the original
4 statement or a copy.

5 **RESPONSE TO FORM INTERROGATORY NO. 12.3:**

6 Defendant objects to this interrogatory on the ground that it is vague and ambiguous as to the
7 defined term "INCIDENT." Subject to and without waiving this objection or the general objections
8 above, defendant responds: No.

9 **FORM INTERROGATORY NO. 12.4:**

10 Do YOU OR ANYONE ACTING ON YOUR BEHALF know of any photographs, films, or
11 videotapes depicting any place, object, or individual concerning the INCIDENT or plaintiff's injuries?

12 If so, state:

13 (a) the number of photographs or feet of film or videotape;

14 (b) the places, objects, or persons photographed, filmed, or videotaped;

15 (c) the date the photographs, films, or videotapes were taken;

16 (d) the name, ADDRESS, and telephone number of the individual taking the photographs,
17 films, or videotapes; and

18 (e) the name, ADDRESS, and telephone number of each PERSON who has the original
19 or a copy of the photographs, films, or videotapes.

20 **RESPONSE TO FORM INTERROGATORY NO. 12.4:**

21 Defendant objects to this interrogatory on the ground that it is vague and ambiguous as to the
22 defined term "INCIDENT." Subject to and without waiving this objection or the general objections
23 above, defendant responds: No.

24 **FORM INTERROGATORY NO. 12.5:**

25 Do YOU OR ANYONE ACTING ON YOUR BEHALF know of any diagram, reproduction,
26 or model of any place or thing (except for items developed by expert witnesses covered by Code of
27 Civil Procedure sections 2034.210-2034.310) concerning the INCIDENT? If so, for each item state:

28 (a) the type (i.e., diagram, reproduction, or model);

1 (b) the subject matter; and

2 (c) the name, ADDRESS, and telephone number of each PERSON who has it.

3 **RESPONSE TO FORM INTERROGATORY NO. 12.5:**

4 Defendant objects to this interrogatory on the ground that it is vague and ambiguous as to the
5 defined term "INCIDENT." Subject to and without waiving this objection or the general objections
6 above, defendant responds: No.

7 **FORM INTERROGATORY NO. 12.6:**

8 Was a report made by any PERSON concerning the INCIDENT? If so, state:

9 (a) the name, title, identification number, and employer of the PERSON who made the
10 report;

11 (b) the date and type of report made;

12 (c) the name, ADDRESS, and telephone number of the PERSON for whom the report was
13 made; and

14 (d) the name, ADDRESS, and telephone number of each PERSON who has the original
15 or a copy of the report.

16 **RESPONSE TO FORM INTERROGATORY NO. 12.6:**

17 Defendant objects to this interrogatory on the ground that it is vague and ambiguous as to the
18 defined term "INCIDENT." Subject to and without waiving this objection or the general objections
19 above, defendant responds: No.

20 **FORM INTERROGATORY NO. 12.7:**

21 Have YOU OR ANYONE ACTING ON YOUR BEHALF inspected the scene of the
22 INCIDENT? If so, for each inspection state:

23 (a) the name, ADDRESS, and telephone number of the individual making the inspection
24 (except for expert witnesses covered by Code of Civil Procedure sections 2034.210-
25 2034.310); and

26 (b) the date of the inspection.

27 **RESPONSE TO FORM INTERROGATORY NO. 12.7:**

28 Defendant objects to this interrogatory on the ground that it is vague and ambiguous as to the

1 defined term "INCIDENT." Subject to and without waiving this objection or the general objections
2 above, defendant responds: No.

3 **FORM INTERROGATORY NO. 13.1:**

4 Have YOU OR ANYONE ACTING ON YOUR BEHALF conducted surveillance of any
5 individual involved in the INCIDENT or any party to this action? If so, for each surveillance state:

- 6 (a) the name, ADDRESS, and telephone number of the individual or party;
7 (b) the time, date, and place of the surveillance;
8 (c) the name, ADDRESS, and telephone number of the individual who conducted the
9 surveillance; and
10 (d) the name, ADDRESS, and telephone number of each PERSON who has the original
11 or a copy of any surveillance photograph, film, or videotape.

12 **RESPONSE TO FORM INTERROGATORY NO. 13.1:**

13 Defendant objects to this interrogatory on the ground that it is vague and ambiguous as to the
14 defined term "INCIDENT." Subject to and without waiving this objection or the general objections
15 above, defendant responds: No.

16 **FORM INTERROGATORY NO. 13.2:**

17 Has a written report been prepared on the surveillance? If so, for each written report state:

- 18 (a) the title;
19 (b) the date;
20 (c) the name, ADDRESS, and telephone number of the individual who prepared the report;
21 and
22 (d) the name, ADDRESS, and the telephone number of each PERSON who has the
23 original or copy.

24 **RESPONSE TO FORM INTERROGATORY NO. 13.2:**

25 Not applicable.

26 **FORM INTERROGATORY NO. 15.1:**

27 Identify each and every denial of a material allegation and each special or affirmative defense
28 in your pleadings and for each:

- 1 (a) state all the facts upon which you base the denial or special or affirmative defense;
2 (b) state the names, ADDRESSES, and telephone numbers of all PERSONS who have
3 knowledge of those facts; and
4 (c) identify all DOCUMENTS and other tangible things that support your denial or special
5 or affirmative defense, and state the name, ADDRESS, and telephone number of the
6 PERSON who has each DOCUMENT

7 **RESPONSE TO FORM INTERROGATORY NO. 15.1:**

8 Defendant objects to this interrogatory on the ground that it is premature, as discovery has just
9 commenced, defendant has not yet obtained any discovery from plaintiff or third parties, and defendant
10 has not completed his investigation of this matter.

11 **FORM INTERROGATORY NO. 17.1:**

12 Is your response to each request for admissions served with these interrogatories an unqualified
13 admission? If not, for each response that is not an unqualified admission:

- 14 (a) state the number of the request;
15 (b) state all facts upon which you base your response;
16 (c) state the names, ADDRESSES, and telephone numbers of all PERSONS who have
17 knowledge of those facts; and
18 (d) identify all DOCUMENTS and other tangible things that support your response and
19 state the name, ADDRESS, and telephone number of the PERSON who has each
20 DOCUMENT or thing.

21 **RESPONSE TO FORM INTERROGATORY NO. 17.1:**

22 Request for Admission No. 2: (a) 2; (b) defendant was accepted into the graduate program for
23 materials science & applied physics at Stanford University in 1995, but deferred his admission and did
24 not enroll in 1995; (c) defendant, Stanford University; (d) Stanford University records.

25 Request for Admission No. 3: (a) 3; (b) defendant has no recollection of ever having met
26 Felipe Lloreda or plaintiff; (c) defendant; (d) none.

27 Request for Admission No. 4: (a) 4; (b) defendant has no recollection of ever having met
28 plaintiff; (c) defendant; (d) none.

1 Request for Admission No. 5: (a) 5; (b) defendant has no recollection of ever having met
2 plaintiff; (c) defendant; (d) none.

3 Request for Admission No. 6: (a) 6; (b) defendant has no recollection of ever having met
4 plaintiff; (c) defendant; (d) none.

5 Request for Admission No. 7: (a) 7; (b) defendant has no recollection of ever having met
6 plaintiff; (c) defendant; (d) none.

7 Request for Admission No. 10: (a) 10; (b) defendant has no recollection of ever having met
8 or paid any compensation to Felipe Lloreda; (c) defendant; (d) none.

9 Request for Admission No. 12: (a) 12; (b) defendant has no recollection of ever having met
10 plaintiff or discussed plaintiff with Zip2 or any representative of Zip2; (c) defendant; (d) none.

11 Request for Admission No. 13: (a) 13; (b) defendant has no recollection of ever having met
12 plaintiff; (c) defendant; (d) none.

13 Request for Admission No. 14: (a) 14; (b) defendant has no recollection of ever having met
14 plaintiff; (c) defendant; (d) none.

15 Request for Admission No. 15: (a) 14; (b) defendant has no recollection of ever having met
16 plaintiff or being provided with any document by plaintiff; (c) defendant; (d) none.

17 Request for Admission No. 16: (a) 16; (b) plaintiff alleges that he first met defendant in
18 October 1995, and defendant had written software that was intended for use in a product that would
19 enable users to locate destinations in various cities and/or obtain directions to those destinations; (c)
20 defendant; (d) none.

21 Request for Admission No. 17: (a) 17; (b) defendant has no recollection of ever having met
22 plaintiff; (c) defendant; (d) none.

23 **FORM INTERROGATORY NO. 50.1:**

24 For each agreement alleged in the pleadings:

25 (a) identify each DOCUMENT that is part of the agreement and for each state the name,
26 ADDRESS, and telephone number of each PERSON who has the DOCUMENT;

27 (b) state each part of the agreement not in writing, the name, ADDRESS, and telephone
28 number of each PERSON agreeing to that provision, and the date that part of the

1 agreement was made;

2 (c) identify all DOCUMENTS that evidence any part of the agreement not in writing and
3 for each state the name, ADDRESS, and telephone number of each PERSON who has
4 the DOCUMENT;

5 (d) identify all DOCUMENTS that are part of any modification to the agreement, and for
6 each state the name, ADDRESS, and telephone number of each person who has the
7 DOCUMENT;

8 (e) state each modification not in writing, the date, and the name, ADDRESS, and
9 telephone number of each PERSON agreeing to the modification, and the date the
10 modification was made;

11 (f) identify all DOCUMENTS that evidence any modification of the agreement not in
12 writing and for each state the name, ADDRESS, and telephone number of each person
13 who has the DOCUMENT.

14 **RESPONSE TO FORM INTERROGATORY NO. 50.1:**

15 Not applicable.

16 **FORM INTERROGATORY NO. 50.2:**

17 Was there a breach of any agreement alleged in the pleadings? If so, for each breach describe
18 and give the date of every act or omission that you can claim is the breach of agreement.

19 **RESPONSE TO FORM INTERROGATORY NO. 50.2:**

20 Not applicable

21 **FORM INTERROGATORY NO. 50.3:**

22 Was performance of any agreement alleged in the pleadings excused? If so, identify each
23 agreement excused and state why performance was excused.

24 **RESPONSE TO FORM INTERROGATORY NO. 50.3:**

25 Not applicable.

26 **FORM INTERROGATORY NO. 50.4:**

27 Was any agreement alleged in the pleadings terminated by mutual agreement, release, accord
28 and satisfaction, or novation? If so, identify each agreement terminated, the date of termination, and

1 the basis of the termination.

2 **RESPONSE TO FORM INTERROGATORY NO. 50.4:**

3 Not applicable.

4 **FORM INTERROGATORY NO. 50.5:**

5 Is any agreement alleged in the pleadings unenforceable? If so, identify each unenforceable
6 agreement and state why it is unenforceable.

7 **RESPONSE TO FORM INTERROGATORY NO. 50.5:**

8 Not applicable.

9 **FORM INTERROGATORY NO. 50.6:**

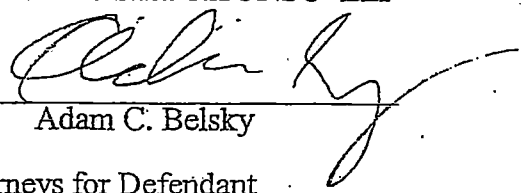
10 Is any agreement alleged in the pleadings ambiguous? If so, identify each ambiguous agreement
11 and state why it is ambiguous.

12 **RESPONSE TO FORM INTERROGATORY NO. 50.6:**

13 Not applicable.

14 Dated: February 6, 2008

GROSS BELSKY ALONSO LLP

15
16 By: 

Adam C. Belsky

17 Attorneys for Defendant
18 ELON MUSK
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PROOF OF SERVICE

RE: John O'Reilly v. Elon Musk, et al.
Santa Clara Superior Court Case No. 1-07-CV-083172

I am a citizen of the United States and employed in the County of San Francisco, State of California. I am over eighteen (18) years of age and not a party to the above-entitled action. My business address is GROSS BELSKY ALONSO LLP, 180 Montgomery Street, Suite 2200, San Francisco, CA, 94104. On the date set forth below, I served the following documents in the manner indicated on the below named parties and/or counsel of record:

• **DEFENDANT'S RESPONSES TO PLAINTIFF'S FORM INTERROGATORIES, SET ONE**

— **Facsimile** transmission from (415) 544-0201 during normal business hours, complete and without error on the date indicated below, as evidenced by the report issued by the transmitting facsimile machine.

— **U.S. Mail**, with First Class postage prepaid and deposited in a sealed envelope at San Francisco, California

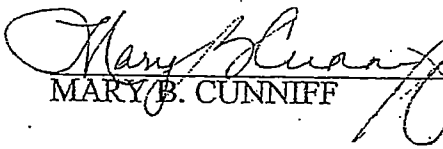
XX **FedEx** overnight delivery

John O'Reilly
101 First Street, #294
Los Altos, CA 94022
Telephone: 650-941-6645
Facsimile: 650-941-9475

Plaintiff In Pro Per

I am readily familiar with the firm's practice for the collection and processing of correspondence for mailing with the United States Postal Service, and said correspondence would be deposited with the United States Postal Service at San Francisco, California that same day in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 6, 2008, at San Francisco, California.


MARY B. CUNIFF



V N I V E R S I T A S
P E N N S Y L V A N I E N S I S

OMNIBVS HAS LITTERAS LECTVRIS SALVTEM DICIT

Cum academicis antiquis mos sit scientiis litterisve
humanioribus exultos titulo iusto condecorare
nos igitur auctoritate Curatorum nobis commissa

ELON R. MUSK

ob studia a Professoribus approbata ad gradum

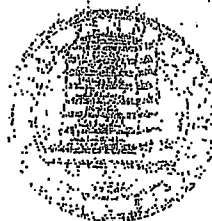
BACCALAVREI ARTIVM

admisimus eique omnia iura honores privilegia ad hunc
gradum pertinentia libenter concessimus

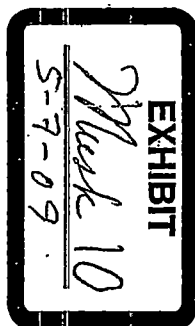
Cuius rei testimonio nomina nostra die mensis
Maii XIX Anno Salutis MCMXCVII et Universitatis
conditae CCLV Philadelphiae subscripsimus

HIC GRADVS CONLATVS EST CVM LAVDE

Barbara R. Stevens
SIGILLI CVSTOS



Judith Rodin
PRAESES
Walter D. Wales
PRO DECANO





V N I V E R S I T A S
P E N N S Y L V A N I E N S I S

OMNIBVS HAS LITTERAS LECTVRIS SALVTEM DICIT

Cum academiis antiquis mos sit scientiis litterisve
humanioribus excultos titulo iusto condecorare
nos igitur auctoritate Curatorum nobis commissa

ELON R. MUSK

ob studia a Professoribus approbata ad gradum

BACHELOR OF SCIENCE IN ECONOMICS

admisimus eique omnia iura honores privilegia ad hunc
gradum pertinentia libenter concessimus

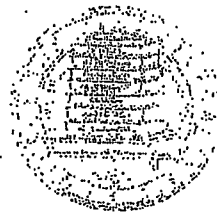
Cuius rei testimonio nomina nostra die mensis

Maii xix Anno Salutis mcmxcvii et Vniuersitatis

conditae cclvii Philadelpiae subscripsimus

HIC GRADVS CONLATVS EST CVM LAVDE

Barbara R. Stevens
SIGILLI CVSTOS



Joshua Rodin
PRAESES
Dean R. [Signature]
DECANVS

Translation of the University of Pennsylvania Diploma (May 1997)

Latin

V N I V E R S I T A S
P E N N S Y L V A N I E N S I S

OMNIBVS HAS LITTERAS LECTVRIS SALVTEM DICTIT

Cum academiis antiquis mos sit scientiis litterisque humanioribus excoltos
titulo iusto condecorare nos igitur auctoritate Curatorum nobis commissa

(NAME)

ob studia a Professoribus approbata ad gradum

admisimus eique omnia iura honores privilegia ad hunc gradum pertinentia
libenter concessimus Cuius rei testimonio nomina nostra die mensis Decembris
XX Anno Salutis MCMXCVI et Universitatis conditae CCLVII Philadelphiae
subscripsimus

(Honors if any: Undergraduate and law degrees only)

HIC GRADVS CONLATVS EST CVM LAVDE

Sigilli Custos

Praeses
Decanus

English

U N I V E R S I T Y
O F P E N N S Y L V A N I A

GREETINGS TO ALL WHO MAY READ THESE LETTERS

Whereas it is the ancient custom of academics to honor with a proper title
those who are distinguished in sciences or arts, therefore by the authority of
the Trustees committed to us, following approval of his/her studies by the
Faculty, we have admitted

(NAME)

to the degree of

(DEGREE)

and to him/her we have freely granted all rights, honors and privileges
pertaining to this degree. In testimony of which we have appended our names
at Philadelphia on the nineteenth day of the month of May in the year of Grace
1997 and in the 257th year of the University.

(This Degree Is Conferred With Distinction)

Secretary

President
Dean



copy

SUBP-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): John O'Reilly 101 First Street, #294 Los Altos, CA 94022 In Pro Per TELEPHONE NO.: (650) 941-6645 FAX NO. (Optional): E-MAIL ADDRESS (Optional): john.oreilly@stanfordalumni.org ATTORNEY FOR (Name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 N. First Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME:	
PLAINTIFF/PETITIONER: John O'Reilly DEFENDANT/RESPONDENT: Elon Musk	
DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS	CASE NUMBER: 107 CV 083172

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):
 Custodian of Records, The Board of Trustees of The Leland Stanford Junior Univ., Stanford, ~~Calif.~~ *Cal.*

1. YOU ARE ORDERED TO PRODUCE THE BUSINESS RECORDS described in item 3, as follows:

To (name of deposition officer): Morton P. MacLeod, Esq. (707) 833-1068
 On (date): December 5, 2008 At (time): 10:00 a.m.
 Location (address): POB 1004, Kenwood, CA 95452

Do not release the requested records to the deposition officer prior to the date and time stated above.

- a. ☒ by delivering a true, legible, and durable copy of the business records described in item 3, enclosed in a sealed inner wrapper with the title and number of the action, name of witness, and date of subpoena clearly written on it. The inner wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and mailed to the deposition officer at the address in item 1.
- b. ☐ by delivering a true, legible, and durable copy of the business records described in item 3 to the deposition officer at the witness's address, on receipt of payment in cash or by check of the reasonable costs of preparing the copy, as determined under Evidence Code section 1563(b).
- c. ☐ by making the original business records described in item 3 available for inspection at your business address by the attorney's representative and permitting copying at your business address under reasonable conditions during normal business hours.
2. The records are to be produced by the date and time shown in item 1 (but not sooner than 20 days after the issuance of the deposition subpoena, or 15 days after service, whichever date is later). Reasonable costs of locating records, making them available or copying them, and postage, if any, are recoverable as set forth in Evidence Code section 1563(b). The records shall be accompanied by an affidavit of the custodian or other qualified witness pursuant to Evidence Code section 1561.
3. The records to be produced are described as follows:
 Re: Elon Musk

☒ Continued on Attachment 3.

4. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: **NOV - 7 2008**

G. FUJIHARA

DAVID H. YAMASAKI
 Chief Executive Officer, Clerk

(TYPE OR PRINT NAME)

(SIGNATURE OF PERSON ISSUING SUBPOENA)

(Proof of service on reverse)

(TITLE)

Page 1 of 2

Exhibit 81

Attachment 3¹

Person:

Name: Elon Musk ("Musk")
DOB: June 28, 1971 (may be incorrect)

Date of Application to Stanford: after 1990
Date of Attendance at Stanford: after 1990

Please provide the following information. (Note: This request applies to all of Stanford's schools and departments.)

1. The date(s) Musk applied to Stanford
2. The date(s) Musk enrolled at Stanford
3. The date(s) Musk attended Stanford
4. The date(s) Musk deferred his enrollment at Stanford
5. The department(s) in which Musk enrolled at Stanford
6. The degree(s) Musk was awarded by Stanford

¹ If the Custodian of Records believes that this request for production is burdensome, he/she is encouraged to contact Plaintiff to discuss how the scope of the request might be reduced. Plaintiff's telephone number is (650) 941-6645, and Plaintiff's e-mail address is john.oreilly@stanfordalumni.org.

PLAINTIFF/PETITIONER: John O'Reilly	CASE NUMBER:
DEFENDANT/RESPONDENT: Elon Musk	107 CV 083172

**PROOF OF SERVICE OF DEPOSITION SUBPOENA FOR
PRODUCTION OF BUSINESS RECORDS**

1. I served this *Deposition Subpoena for Production of Business Records* by personally delivering a copy to the person served as follows:

a. Person served (name): LAUREN Schoenmuler

b. Address where served: Stanford University
Building 170

c. Date of delivery: 11-13-08

d. Time of delivery: 2:40 P.M.

e. (1) ☐ Witness fees were paid.
Amount: \$ —

(2) ☐ Copying fees were paid.
Amount: \$ —

f. Fee for service: \$ —

2. I received this subpoena for service on (date): 11-13-08

3. Person serving:

- a. ☒ Not a registered California process server.
b. ☐ California sheriff or marshal.
c. ☐ Registered California process server.
d. ☐ Employee or independent contractor of a registered California process server.
e. ☐ Exempt from registration under Business and Professions Code section 22350(b).
f. ☐ Registered professional photocopier.
g. ☐ Exempt from registration under Business and Professions Code section 22451.
h. Name, address, telephone number, and, if applicable, county of registration and number:

~~Michael Schoendorf
13145 Byrd Lane
Los Altos Hills, CA 94022
(650) 948-9202~~

Name: Bill Davis

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 11-13-08

▶ Bill Davis
(SIGNATURE)

(For California sheriff or marshal use only)
I certify that the foregoing is true and correct.

Date:

▶ _____
(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): John O'Reilly 101 First Street, #294 Los Altos, CA 94022 TELEPHONE NO.: (650) 941-6645 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 N. First Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME:	
PLAINTIFF/ PETITIONER: John O'Reilly DEFENDANT/ RESPONDENT: Elon Musk	CASE NUMBER: 107 CV 083172
NOTICE TO CONSUMER OR EMPLOYEE AND OBJECTION (Code Civ. Proc., §§ 1985.3, 1985.6)	

NOTICE TO CONSUMER OR EMPLOYEE

TO (name): Elon Musk c/o Adam Belsky, Esq.

1. PLEASE TAKE NOTICE THAT REQUESTING PARTY (name): John O'Reilly

SEEKS YOUR RECORDS FOR EXAMINATION by the parties to this action on (specify date): Dec. 5, 2008

The records are described in the subpoena directed to witness (specify name and address of person or entity from whom records are sought): Custodian of Records, The Board of Trustees of Stanford University, Stanford, Calif.
 A copy of the subpoena is attached.

2. IF YOU OBJECT to the production of these records, YOU MUST DO ONE OF THE FOLLOWING BEFORE THE DATE SPECIFIED. IN ITEM a. OR b. BELOW:

- a. If you are a party to the above-entitled action, you must file a motion pursuant to Code of Civil Procedure section 1987.1 to quash or modify the subpoena and give notice of that motion to the **witness** and the **deposition officer** named in the subpoena at least five days before the date set for production of the records.
- b. If you are not a party to this action, you must serve on the **requesting party** and on the **witness**, before the date set for production of the records, a written objection that states the specific grounds on which production of such records should be prohibited. You may use the form below to object and state the grounds for your objection. You must complete the Proof of Service on the reverse side indicating whether you personally served or mailed the objection. The objection should not be filed with the court. **WARNING: IF YOUR OBJECTION IS NOT RECEIVED BEFORE THE DATE SPECIFIED IN ITEM 1, YOUR RECORDS MAY BE PRODUCED AND MAY BE AVAILABLE TO ALL PARTIES.**

3. YOU OR YOUR ATTORNEY MAY CONTACT THE UNDERSIGNED to determine whether an agreement can be reached in writing to cancel or limit the scope of the subpoena. If no such agreement is reached, and if you are not otherwise represented by an attorney in this action, YOU SHOULD CONSULT AN ATTORNEY TO ADVISE YOU OF YOUR RIGHTS OF PRIVACY.

Date: 11-7-08

John O'Reilly

(TYPE OR PRINT NAME)

(SIGNATURE OF ☒ REQUESTING PARTY ☐ ATTORNEY)

OBJECTION BY NON-PARTY TO PRODUCTION OF RECORDS

1. ☐ I object to the production of all of my records specified in the subpoena.
2. ☐ I object only to the production of the following specified records:

3. The specific grounds for my objection areas follows:

Date:

(TYPE OR PRINT NAME)

(SIGNATURE)

(Proof of service on reverse)



STANFORD
UNIVERSITY



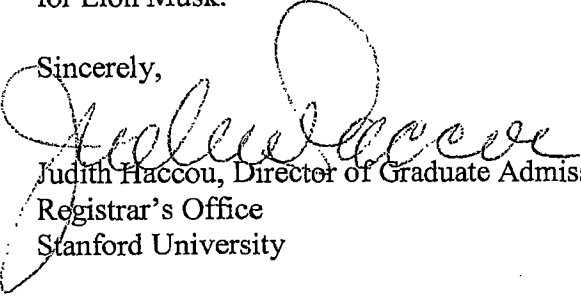
December 16, 2008

John O'Reilly
101 First Street, #294
Los Altos, CA 94022

RE: John O'Reilly vs Elon Musk

Based upon the information you provided, we are unable to locate a record in our office for Elon Musk.

Sincerely,


Judith Haccou, Director of Graduate Admissions
Registrar's Office
Stanford University

Office of the University Registrar
630 Serra Street, Stanford, CA 94305-6032

Exhibit 82



1 Terry Gross (103878)
Adam C. Belsky (147800)
2 Monique Alonso (127078)
GROSS BELSKY ALONSO LLP
3 180 Montgomery Street, Suite 2200
San Francisco, California 94104
4 Telephone: (415) 544-0200
Facsimile: (415) 544-0201

5 Attorneys for Defendant
6 ELON MUSK

7
8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SANTA CLARA**

11 JOHN O'REILLY,

12 Plaintiff,

13 v.

14 ELON MUSK; DOES CONSPIRATORS
1-10, Inclusive; and DOES 11 through 25,
15 Inclusive,

16 Defendants.
17

) Case No. 1-07-CV-083172

) **DEFENDANT'S RESPONSES TO**
) **PLAINTIFF'S REQUESTS FOR**
) **PRODUCTION OF DOCUMENTS,**
) **SET ONE**

18 PROPOUNDING PARTY: Plaintiff JOHN O'REILLY

19 RESPONDING PARTY: Defendant ELON MUSK

20 SET NUMBER: ONE

21 **GENERAL OBJECTIONS**

22 1. Plaintiff objects to each Request to the extent that it seeks information protected from
23 disclosure by the attorney-client privilege, the work-product doctrine, or any other claim of privilege.

24 2. Plaintiff objects to each Request to the extent that it seeks information protected from
25 disclosure by plaintiff's rights to privacy under the California Constitution, the United States
26 Constitution, and other laws.

27 3. Plaintiff objects to each Request to the extent that it seeks information that is neither
28 relevant nor reasonably calculated to lead to the discovery of admissible evidence relevant to the

1 subject matter of this action.

2 4. Plaintiff objects to each Request to the extent that it is overbroad, unduly burdensome,
3 compound, complex, vague, or ambiguous and/or seek information equally available to the asking
4 party.

5 5. These responses and objections are based only on the information obtained to date.
6 Because discovery and trial preparation are in an early stage and are continuing and because plaintiff
7 has not completed his investigation of this matter, plaintiff expressly reserves the right to present at
8 any hearing or trial additional information obtained after the date of these responses.

9 Subject to and without waiving each of his general objections, plaintiff responds as follows:

10 **REQUEST FOR PRODUCTION NO. 1:**

11 All YOUR calendars, notebooks, and diaries from January 1995 to June 1996 that contain
12 entries REGARDING business directory software.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

14 Defendant objects to this request on the grounds that it is overbroad, unduly burdensome, and
15 seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of
16 admissible evidence based on the definition of "YOUR." Defendant further objects to this request on
17 the ground that it is vague and ambiguous as to the term "business directory software." Subject to and
18 without waiving these objections or the general objections above, defendant responds that a diligent
19 search and a reasonable inquiry has been made in an effort to comply with this request, but defendant
20 lacks the ability to comply because defendant has no responsive documents in his possession, custody,
21 or control, as the requested items never existed or have been lost or destroyed.

22 **REQUEST FOR PRODUCTION NO. 2:**

23 All YOUR calendars, notebooks, and diaries from January 1995 to June 1996 that contain
24 entries REGARDING mapping software.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

26 Defendant objects to this request on the grounds that it is overbroad, unduly burdensome, and
27 seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of
28 admissible evidence based on the definition of "YOUR." Defendant further objects to this request on

1 the ground that it is vague and ambiguous as to the term "mapping software." Subject to and without
2 waiving these objections or the general objections above, defendant responds that a diligent search and
3 a reasonable inquiry has been made in an effort to comply with this request, but defendant lacks the
4 ability to comply because defendant has no responsive documents in his possession, custody, or
5 control, as the requested items never existed or have been lost or destroyed.

6 **REQUEST FOR PRODUCTION NO. 3:**

7 All YOUR calendars, notebooks, and diaries from January 1995 to present that contain entries
8 REGARDING Plaintiff.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

10 Defendant objects to this request on the grounds that it is overbroad, unduly burdensome, and
11 seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of
12 admissible evidence based on the definition of "YOUR." Subject to and without waiving these
13 objections or the general objections above, defendant responds that a diligent search and a reasonable
14 inquiry has been made in an effort to comply with this request, but defendant lacks the ability to
15 comply because defendant has no responsive documents in his possession, custody, or control, as the
16 requested items never existed or have been lost or destroyed.

17 **REQUEST FOR PRODUCTION NO. 4:**

18 All YOUR calendars, notebooks, and diaries from January 1995 to present that contain entries
19 REGARDING Felipe Lloreda.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

21 Defendant objects to this request on the grounds that it is overbroad, unduly burdensome, and
22 seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of
23 admissible evidence based on the definition of "YOUR." Subject to and without waiving these
24 objections or the general objections above, defendant responds that a diligent search and a reasonable
25 inquiry has been made in an effort to comply with this request, but defendant lacks the ability to
26 comply because defendant has no responsive documents in his possession, custody, or control, as the
27 requested items never existed or have been lost or destroyed.

28 //

1 **REQUEST FOR PRODUCTION NO. 5:**

2 All DOCUMENTS from January 1995 to June 1996 REGARDING business directory
3 software.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

5 Defendant objects to this request on the grounds that it is overbroad, unduly burdensome, and
6 seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of
7 admissible evidence. Defendant further objects to this request on the ground that it is vague and
8 ambiguous as to the terms "from January 1995 to June 1996" and "business directory software."

9 **REQUEST FOR PRODUCTION NO. 6:**

10 All DOCUMENTS from January 1995 to June 1996 REGARDING mapping software.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

12 Defendant objects to this request on the grounds that it is overbroad, unduly burdensome, and
13 seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of
14 admissible evidence. Defendant further objects to this request on the ground that it is vague and
15 ambiguous as to the terms "from January 1995 to June 1996" and "mapping software."

16 **REQUEST FOR PRODUCTION NO. 7:**

17 All DOCUMENTS from January 1995 to the present REGARDING Plaintiff.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

19 Defendant objects to this request on the ground that it seeks documents protected from
20 discovery by the attorney-client privilege and the work product doctrine. Subject to and without
21 waiving these objections or the general objections above, defendant responds that a diligent search and
22 a reasonable inquiry has been made in an effort to comply with this request, but defendant lacks the
23 ability to comply because defendant has no responsive, non-privileged documents in his possession,
24 custody, or control, other than pleadings filed in this litigation and communications with plaintiff
25 concerning this litigation, as the requested items never existed or have been lost or destroyed.

26 **REQUEST FOR PRODUCTION NO. 8:**

27 All DOCUMENTS from January 1995 to the present REGARDING Felipe Lloreda.

28 //

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

2 Defendant objects to this request on the ground that it seeks documents protected from
3 discovery by the attorney-client privilege and the work product doctrine. Subject to and without
4 waiving these objections or the general objections above, defendant responds that a diligent search and
5 a reasonable inquiry has been made in an effort to comply with this request, but defendant lacks the
6 ability to comply because defendant has no responsive, non-privileged documents in his possession,
7 custody, or control, other than pleadings filed in this litigation and communications with plaintiff
8 concerning this litigation, as the requested items never existed or have been lost or destroyed.

9 **REQUEST FOR PRODUCTION NO. 9:**

10 All DOCUMENTS from January 1995 to December 1996 REGARDING ZIP2's formation.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

12 Defendant objects to this request on the grounds that it is overbroad, unduly burdensome, and
13 seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of
14 admissible evidence. Subject to and without waiving these objections or the general objections above,
15 defendant responds that a diligent search and a reasonable inquiry has been made in an effort to
16 comply with this request, but defendant lacks the ability to comply because defendant has no
17 responsive documents in his possession, custody, or control, as the requested items have been lost or
18 destroyed.

19 **REQUEST FOR PRODUCTION NO. 10:**

20 All DOCUMENTS from January 1995 to December 1996 REGARDING ZIP2's incorporation.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

22 Defendant objects to this request on the grounds that it is overbroad, unduly burdensome, and
23 seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of
24 admissible evidence. Subject to and without waiving these objections or the general objections above,
25 defendant responds that a diligent search and a reasonable inquiry has been made in an effort to
26 comply with this request, but defendant lacks the ability to comply because defendant has no
27 responsive documents in his possession, custody, or control, as the requested items have been lost or
28 destroyed.

1 **REQUEST FOR PRODUCTION NO. 11:**

2 All DOCUMENTS from January 1995 to December 1996 REGARDING ZIP2's Bylaws.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

4 Defendant objects to this request on the grounds that it is overbroad, unduly burdensome, and
5 seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of
6 admissible evidence. Subject to and without waiving these objections or the general objections above,
7 defendant responds that a diligent search and a reasonable inquiry has been made in an effort to
8 comply with this request, but defendant lacks the ability to comply because defendant has no
9 responsive documents in his possession, custody, or control, as the requested items have been lost or
10 destroyed.

11 **REQUEST FOR PRODUCTION NO. 12:**

12 All DOCUMENTS from January 1995 to December 1996 REGARDING ZIP2's Board of
13 Directors.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

15 Defendant objects to this request on the grounds that it is overbroad, unduly burdensome, and
16 seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of
17 admissible evidence. Subject to and without waiving these objections or the general objections above,
18 defendant responds that a diligent search and a reasonable inquiry has been made in an effort to
19 comply with this request, but defendant lacks the ability to comply because defendant has no
20 responsive documents in his possession, custody, or control, as the requested items have been lost or
21 destroyed.

22 **REQUEST FOR PRODUCTION NO. 13:**

23 All DOCUMENTS from January 1995 to December 1996 REGARDING ZIP2's fund-raising
24 efforts.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

26 Defendant objects to this request on the grounds that it is overbroad, unduly burdensome, and
27 seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of
28 admissible evidence. Subject to and without waiving these objections or the general objections above,

1 defendant responds that a diligent search and a reasonable inquiry has been made in an effort to
2 comply with this request, but defendant lacks the ability to comply because defendant has no
3 responsive documents in his possession, custody, or control, as the requested items have been lost or
4 destroyed.

5 **REQUEST FOR PRODUCTION NO. 14:**

6 All DOCUMENTS from January 1995 to December 1996 REGARDING YOUR fund-raising
7 efforts REGARDING ZIP2.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

9 Defendant objects to this request on the grounds that it is overbroad, unduly burdensome, and
10 seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of
11 admissible evidence. Subject to and without waiving these objections or the general objections above,
12 defendant responds that a diligent search and a reasonable inquiry has been made in an effort to
13 comply with this request, but defendant lacks the ability to comply because defendant has no
14 responsive documents in his possession, custody, or control, as the requested items have been lost or
15 destroyed.

16 **REQUEST FOR PRODUCTION NO. 15:**

17 All COMMUNICATIONS between YOU and venture capital firms from January 1995 to
18 December 1996.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

20 Defendant objects to this request on the grounds that it is overbroad, unduly burdensome, and
21 seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of
22 admissible evidence. Subject to and without waiving these objections or the general objections above,
23 defendant responds that a diligent search and a reasonable inquiry has been made in an effort to
24 comply with this request, but defendant lacks the ability to comply because defendant has no
25 responsive documents in his possession, custody, or control, as the requested items have been lost or
26 destroyed.

27 **REQUEST FOR PRODUCTION NO. 16:**

28 All DOCUMENTS REGARDING Mohr Davidow Ventures from January 1995 to December

1 1996.

2 **RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

3 Defendant objects to this request on the grounds that it is overbroad, unduly burdensome, and
4 seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of
5 admissible evidence. Subject to and without waiving these objections or the general objections above,
6 defendant responds that a diligent search and a reasonable inquiry has been made in an effort to
7 comply with this request, but defendant lacks the ability to comply because defendant has no
8 responsive documents in his possession, custody, or control, as the requested items have been lost or
9 destroyed.

10 **REQUEST FOR PRODUCTION NO. 17:**

11 All DOCUMENTS from January 1995 to December 1996 REGARDING MEETINGS YOU
12 had with Mohr Davidow Ventures.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

14 Defendant objects to this request on the grounds that it is overbroad, unduly burdensome, and
15 seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of
16 admissible evidence. Subject to and without waiving these objections or the general objections above,
17 defendant responds that a diligent search and a reasonable inquiry has been made in an effort to
18 comply with this request, but defendant lacks the ability to comply because defendant has no
19 responsive documents in his possession, custody, or control, as the requested items have been lost or
20 destroyed.

21 **REQUEST FOR PRODUCTION NO. 18:**

22 All DOCUMENTS from January 1995 to the present REGARDING MEETINGS YOU had
23 with Plaintiff.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

25 Defendant objects to this request on the grounds that it is overbroad, unduly burdensome, and
26 seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of
27 admissible evidence. Subject to and without waiving these objections or the general objections above,
28 defendant responds that a diligent search and a reasonable inquiry has been made in an effort to

1 comply with this request, but defendant lacks the ability to comply because defendant has no
2 responsive documents in his possession, custody, or control, as the requested items never existed or
3 have been lost or destroyed.

4 **REQUEST FOR PRODUCTION NO.19:**

5 All COMMUNICATIONS to or from YOU REGARDING business directory software from
6 January 1995 to December 1996.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

8 Defendant objects to this request on the grounds that it is overbroad, unduly burdensome, and
9 seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of
10 admissible evidence. Defendant further objects to this request on the ground that it is vague and
11 ambiguous as to the term "business directory software." Subject to and without waiving these
12 objections or the general objections above, defendant responds that a diligent search and a reasonable
13 inquiry has been made in an effort to comply with this request, but defendant lacks the ability to
14 comply because defendant has no responsive documents in his possession, custody, or control, as the
15 requested items have been lost or destroyed.

16 **REQUEST FOR PRODUCTION NO. 20:**

17 All COMMUNICATIONS to or from YOU REGARDING mapping software from January
18 1995 to January 1996.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

20 Defendant objects to this request on the grounds that it is overbroad, unduly burdensome, and
21 seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of
22 admissible evidence. Defendant further objects to this request on the ground that it is vague and
23 ambiguous as to the term "mapping software." Subject to and without waiving these objections or the
24 general objections above, defendant responds that a diligent search and a reasonable inquiry has been
25 made in an effort to comply with this request, but defendant lacks the ability to comply because
26 defendant has no responsive documents in his possession, custody, or control, as the requested items
27 have been lost or destroyed.

28 **REQUEST FOR PRODUCTION NO. 21:**

1 All COMMUNICATIONS to or from YOU REGARDING ZIP2 from January 1995 to January
2 1996.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

4 Defendant objects to this request on the grounds that it is overbroad, unduly burdensome, and
5 seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of
6 admissible evidence. Subject to and without waiving these objections or the general objections above,
7 defendant responds that a diligent search and a reasonable inquiry has been made in an effort to
8 comply with this request, but defendant lacks the ability to comply because defendant has no
9 responsive documents in his possession, custody, or control, as the requested items have been lost or
10 destroyed.

11 **REQUEST FOR PRODUCTION NO. 22:**

12 All COMMUNICATIONS to or from YOU REGARDING ZIP2 from April 2007 to the
13 present.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

15 Defendant objects to this request on the ground that it seeks documents protected from
16 discovery by the attorney-client privilege and the work product doctrine. Defendant further objects
17 to this request on the grounds that it seeks documents that are neither relevant nor reasonably
18 calculated to lead to the discovery of admissible evidence.

19 **REQUEST FOR PRODUCTION NO. 23:**

20 All COMMUNICATIONS to or from YOU REGARDING Plaintiff from January 1995 to the
21 present.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

23 Defendant objects to this request on the ground that it seeks documents protected from
24 discovery by the attorney-client privilege and the work product doctrine. Subject to and without
25 waiving these objections or the general objections above, defendant responds that a diligent search and
26 a reasonable inquiry has been made in an effort to comply with this request, but defendant lacks the
27 ability to comply because defendant has no responsive, non-privileged documents in his possession,
28 custody, or control, other than pleadings filed in this litigation and communications with plaintiff

1 concerning this litigation, as the requested items never existed or have been lost or destroyed.

2 **REQUEST FOR PRODUCTION NO. 24:**

3 All COMMUNICATIONS to or from YOU REGARDING Felipe Lloreda from January 1995
4 to the present.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 24:**

6 Defendant objects to this request on the ground that it seeks documents protected from
7 discovery by the attorney-client privilege and the work product doctrine. Subject to and without
8 waiving these objections or the general objections above, defendant responds that a diligent search and
9 a reasonable inquiry has been made in an effort to comply with this request, but defendant lacks the
10 ability to comply because defendant has no responsive, non-privileged documents in his possession,
11 custody, or control, other than pleadings filed in this litigation and communications with plaintiff
12 concerning this litigation, as the requested items never existed or have been lost or destroyed.

13 **REQUEST FOR PRODUCTION NO. 25:**

14 All COMMUNICATIONS between YOU and Kimbal Musk from January 1995 to December
15 1996.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 25:**

17 Defendant objects to this request on the grounds that it is overbroad, unduly burdensome, and
18 seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of
19 admissible evidence. Subject to and without waiving these objections or the general objections above,
20 defendant responds that a diligent search and a reasonable inquiry has been made in an effort to
21 comply with this request, but defendant lacks the ability to comply because defendant has no
22 responsive documents in his possession, custody, or control, as the requested items have been lost or
23 destroyed.

24 **REQUEST FOR PRODUCTION NO. 26:**

25 All COMMUNICATIONS between YOU and Kimbal Musk from April 2007 to the present.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

27 Defendant objects to this request on the grounds that it is overbroad, unduly burdensome, and
28 seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of

1 admissible evidence.

2 **REQUEST FOR PRODUCTION NO. 27:**

3 All COMMUNICATIONS between YOU and Richard Sorkin from January 1995 to December
4 1996.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 27:**

6 Defendant objects to this request on the grounds that it is overbroad, unduly burdensome, and
7 seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of
8 admissible evidence. Subject to and without waiving these objections or the general objections above,
9 defendant responds that a diligent search and a reasonable inquiry has been made in an effort to
10 comply with this request, but defendant lacks the ability to comply because defendant has no
11 responsive documents in his possession, custody, or control, as the requested items have been lost or
12 destroyed.

13 **REQUEST FOR PRODUCTION NO. 28:**

14 All COMMUNICATIONS between YOU and Richard Sorkin from April 2007 to the present.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 28:**

16 Defendant objects to this request on the grounds that it is overbroad, unduly burdensome, and
17 seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of
18 admissible evidence.

19 **REQUEST FOR PRODUCTION NO. 29:**

20 All DOCUMENTS REGARDING representations and warranties YOU made REGARDING
21 ZIP2 from January 1995 to December 1996.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO.29:**

23 Defendant objects to this request on the grounds that it is overbroad, unduly burdensome, and
24 seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of
25 admissible evidence. Defendant further objects to this request on the ground that it is vague and
26 ambiguous as to the term "representations and warranties." Subject to and without waiving these
27 objections or the general objections above, defendant responds that a diligent search and a reasonable
28 inquiry has been made in an effort to comply with this request, but defendant lacks the ability to

1 comply because defendant has no responsive documents in his possession, custody, or control, as the
2 requested items have been lost or destroyed.

3 **REQUEST FOR PRODUCTION NO. 30:**

4 All DOCUMENTS REGARDING representation and warranties ZIP2 made from January 1995
5 to December 1999.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 30:**

7 Defendant objects to this request on the grounds that it is overbroad, unduly burdensome, and
8 seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of
9 admissible evidence. Defendant further objects to this request on the ground that it is vague and
10 ambiguous as to the term "representations and warranties." Subject to and without waiving these
11 objections or the general objections above, defendant responds that a diligent search and a reasonable
12 inquiry has been made in an effort to comply with this request, but defendant lacks the ability to
13 comply because defendant has no responsive documents in his possession, custody, or control, as the
14 requested items have been lost or destroyed.

15 **REQUEST FOR PRODUCTION NO. 31:**

16 All DOCUMENTS from January 1995 to December 1996 REGARDING YOUR admission
17 to Stanford University.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 31:**

19 Defendant objects to this request on the grounds that it is overbroad, unduly burdensome, and
20 seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of
21 admissible evidence. Subject to and without waiving these objections or the general objections above,
22 defendant responds that a diligent search and a reasonable inquiry has been made in an effort to
23 comply with this request, but defendant lacks the ability to comply because defendant has no
24 responsive documents in his possession, custody, or control, as the requested items have been lost or
25 destroyed.

26 **REQUEST FOR PRODUCTION NO. 32:**

27 All DOCUMENTS from January 1995 to December 1996 REGARDING YOUR enrollment
28 at Stanford University.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 32:**

2 Defendant objects to this request on the grounds that it is overbroad, unduly burdensome, and
3 seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of
4 admissible evidence. Defendant further objects to this request on the ground that it is vague and
5 ambiguous as to the term "enrollment." Subject to and without waiving these objections or the general
6 objections above, defendant responds that a diligent search and a reasonable inquiry has been made
7 in an effort to comply with this request, but defendant lacks the ability to comply because defendant
8 has no responsive documents in his possession, custody, or control, as the requested items have been
9 lost or destroyed.

10 **REQUEST FOR PRODUCTION NO. 33:**

11 All COMMUNICATIONS from January 1995 to the present REGARDING John Gordon.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 33:**

13 Defendant objects to this request on the grounds that it is overbroad, unduly burdensome, and
14 seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of
15 admissible evidence. Subject to and without waiving these objections or the general objections above,
16 defendant responds that a diligent search and a reasonable inquiry has been made in an effort to
17 comply with this request, but defendant lacks the ability to comply because defendant has no
18 responsive documents in his possession, custody, or control, as the requested items never existed or
19 have been lost or destroyed.

20 **REQUEST FOR PRODUCTION NO. 34:**

21 All COMMUNICATIONS from January 1995 to the present REGARDING Greg Kouri.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 34:**

23 Defendant objects to this request on the grounds that it is overbroad, unduly burdensome, and
24 seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of
25 admissible evidence. Subject to and without waiving these objections or the general objections above,
26 defendant responds that a diligent search and a reasonable inquiry has been made in an effort to
27 comply with this request, but defendant lacks the ability to comply because defendant has no
28 responsive documents in his possession, custody, or control, as the requested items have been lost or

1 destroyed.

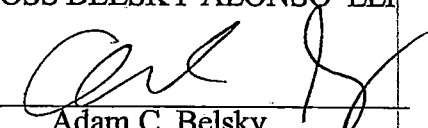
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3 Dated: February 6, 2008

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GROSS BELSKY ALONSO LLP

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By: 

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Adam C. Belsky

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Attorneys for Defendant
ELON MUSK

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VERIFICATION

I, ELON MUSK, declare:

I am a defendant in the above action. I have read the foregoing **DEFENDANT'S RESPONSES TO PLAINTIFF'S REQUESTS FOR PRODUCTION OF DOCUMENTS, SET ONE**, and know the contents thereof. I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February __, 2008, at _____, California

ELON MUSK

1 VERIFICATION

2 I, ELON MUSK, declare:

3 I am a defendant in the above action. I have read the foregoing DEFENDANT'S
4 RESPONSES TO PLAINTIFF'S REQUESTS FOR PRODUCTION OF DOCUMENTS, SET
5 ONE, and know the contents thereof. I certify that the same is true of my own knowledge, except as
6 to those matters which are therein stated upon my information and belief, and as to those matters, I
7 believe them to be true.

8 I declare under penalty of perjury under the laws of the State of California that the foregoing
9 is true and correct.

10 Executed on February 12, 2008, at Hawthorne, California

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12 _____
13 ELON MUSK
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PROOF OF SERVICE

RE: John O'Reilly v. Elon Musk, et al.
Santa Clara Superior Court Case No. 1-07-CV-083172

I am a citizen of the United States and employed in the County of San Francisco, State of California. I am over eighteen (18) years of age and not a party to the above-entitled action. My business address is GROSS BELSKY ALONSO LLP, 180 Montgomery Street, Suite 2200, San Francisco, CA, 94104. On the date set forth below, I served the following documents in the manner indicated on the below named parties and/or counsel of record:

• **DEFENDANT'S RESPONSES TO PLAINTIFF'S REQUESTS FOR PRODUCTION OF DOCUMENTS, SET ONE**

— **Facsimile** transmission from (415) 544-0201 during normal business hours, complete and without error on the date indicated below, as evidenced by the report issued by the transmitting facsimile machine.

— **U.S. Mail**, with First Class postage prepaid and deposited in a sealed envelope at San Francisco, California

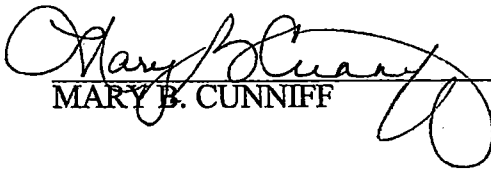
XX **FedEx** overnight delivery

John O'Reilly
101 First Street, #294
Los Altos, CA 94022
Telephone: 650-941-6645
Facsimile: 650-941-9475

Plaintiff In Pro Per

I am readily familiar with the firm's practice for the collection and processing of correspondence for mailing with the United States Postal Service, and said correspondence would be deposited with the United States Postal Service at San Francisco, California that same day in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 6, 2008, at San Francisco, California.


MARY B. CUNIFF